

A Theory of Global Energy Governance (Oxford University Press 2025)

Freddy Sourgens

February 17, 2025

The Problem

The Collective Action Problem: Tragedies, Rivalries & the Quest for a Way Out



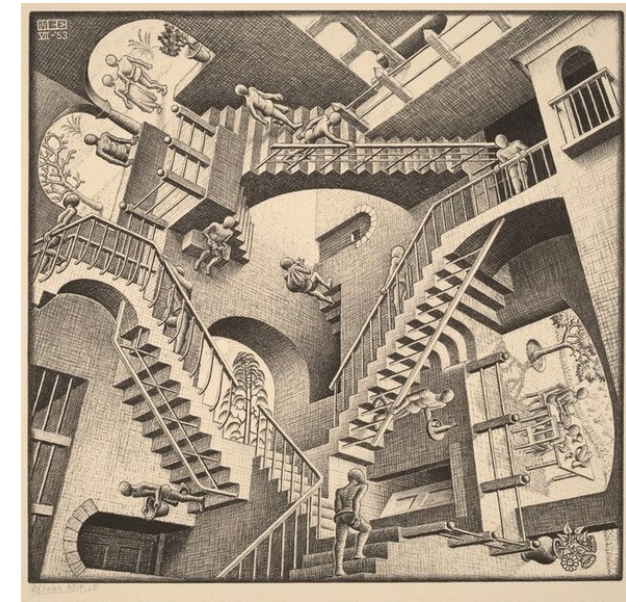
Garrett Hardin
Picture Credit: Science.org



Michael Heller
Picture Credit: Columbia Law



Kenneth Waltz
Picture Credit: Jane Scherr



Relativity, M.C. Escher
Cordon Art-Baarn-NL

'Energy' All the Way Down

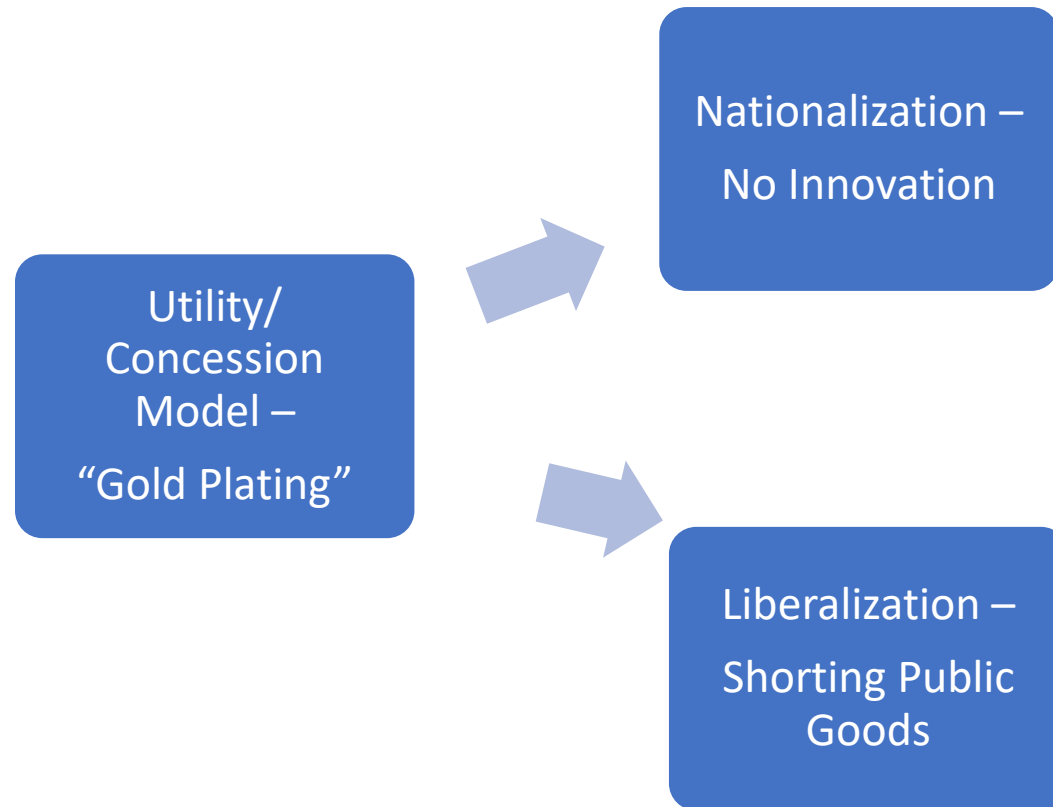


Pres. Jimmy Carter (& Solar Panels)
Harvey Georges (AP)



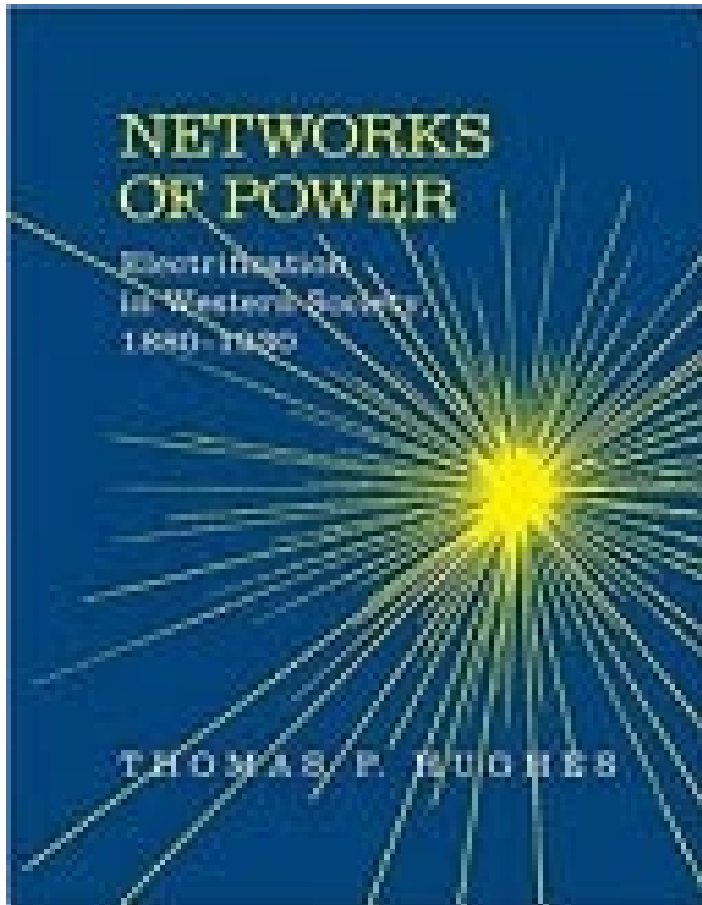
Chancellor Dr. Angela Merkel (& Others at
NordStream Pipeline Event)
S. Sauer (DPA)

Energy Governance = Part of the Problem

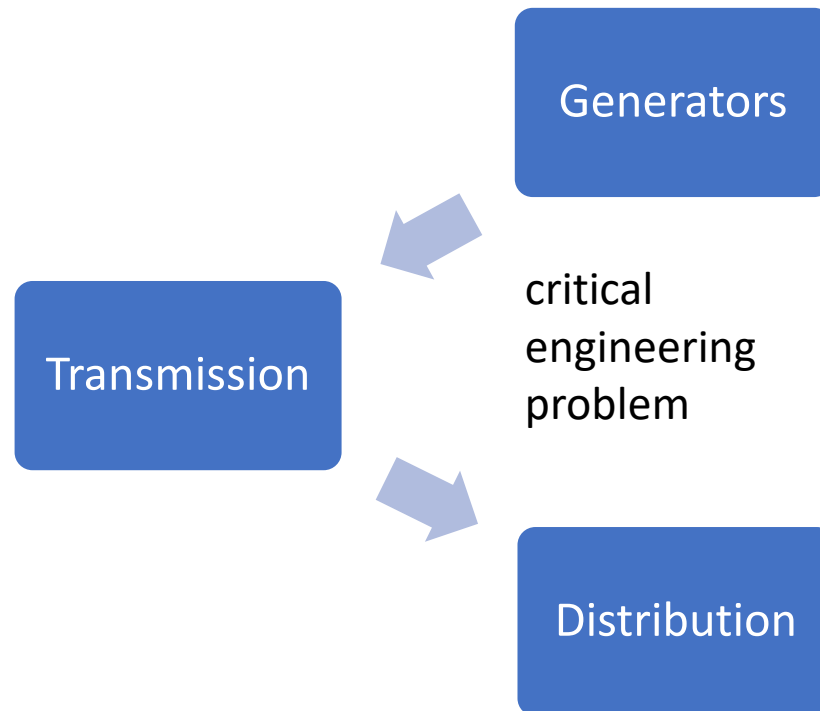


Theory

Innovation: Reverse Salient & Critical Problems



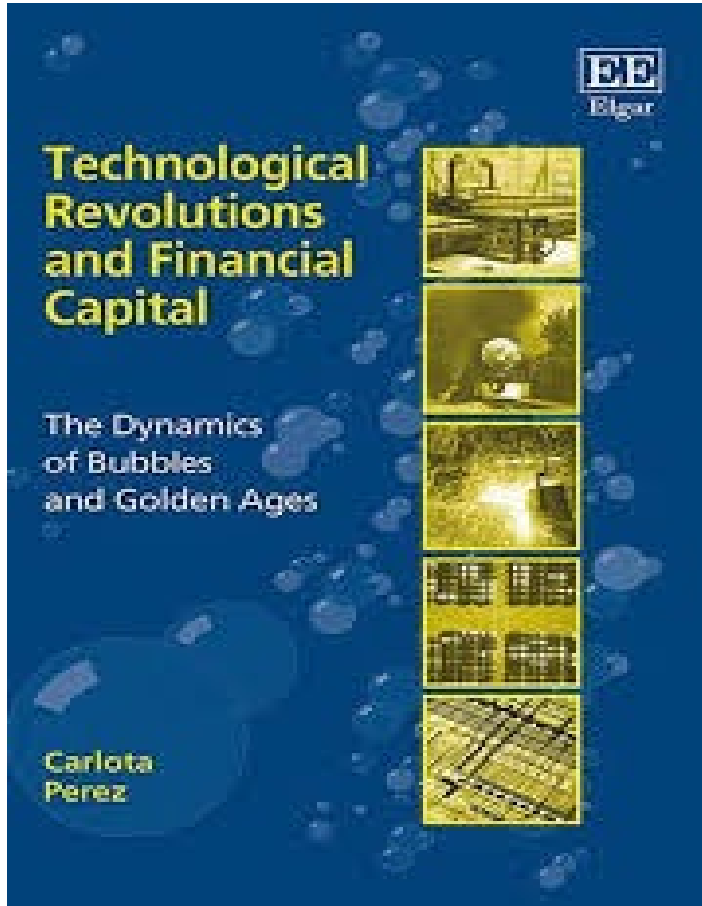
Johns Hopkins University Press



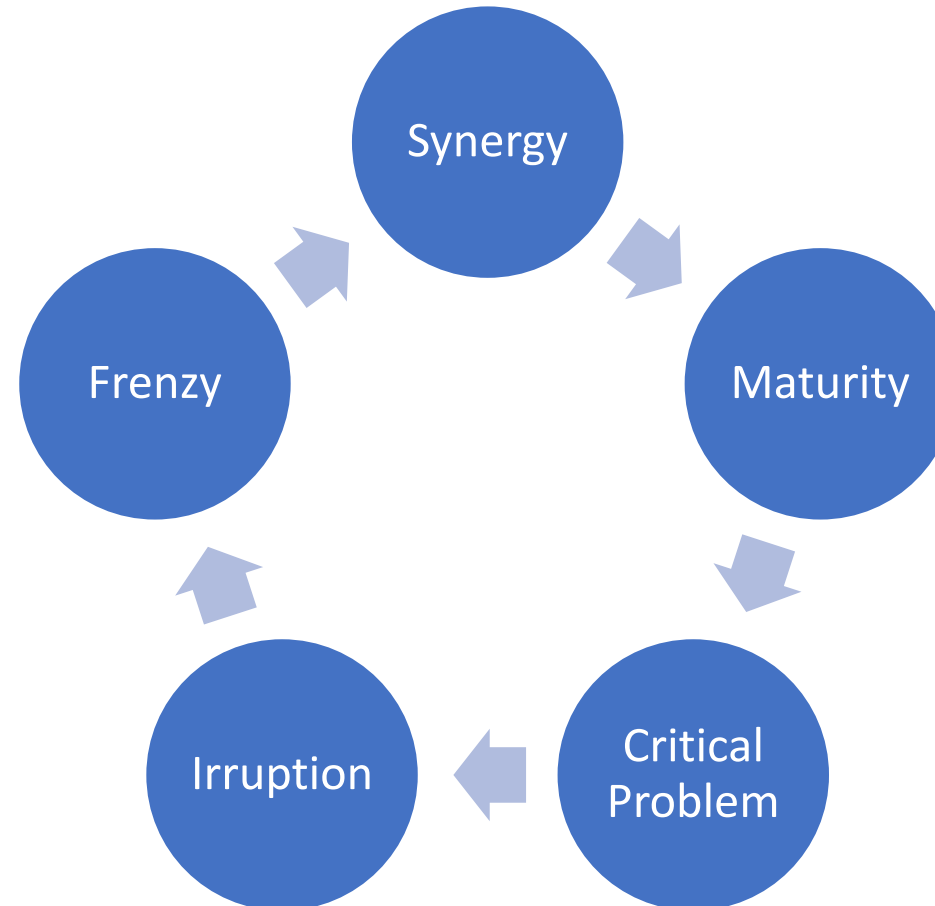
Innovate out of the impasse



Energy Cycles



Edward Elgar



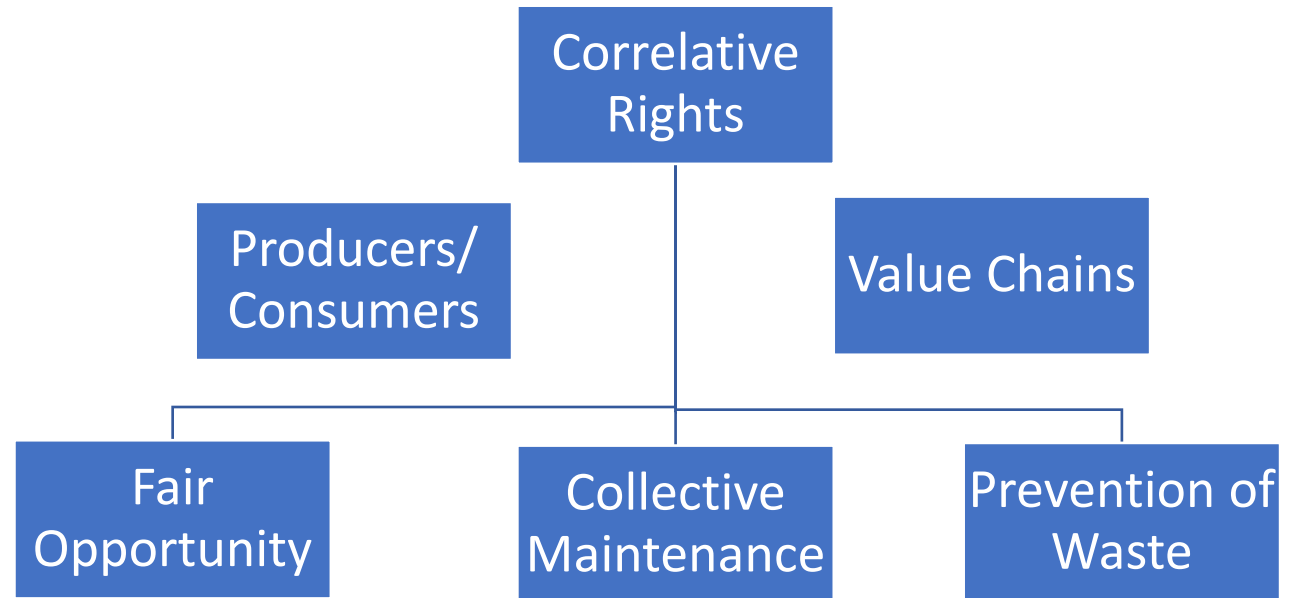
Energy Checks & Balances



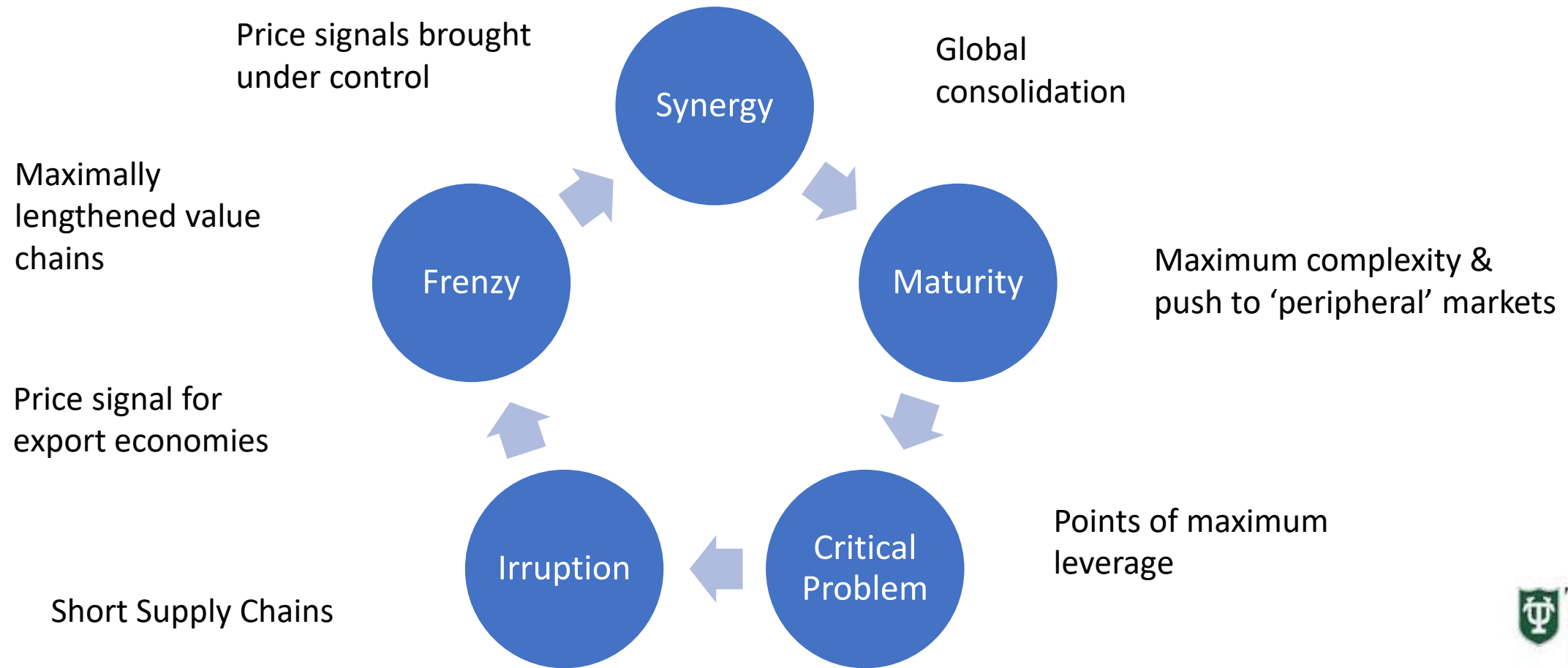
The Bond of Belonging



Jacques Louis David: Intervention of the Sabine Women
Musée du Louvre



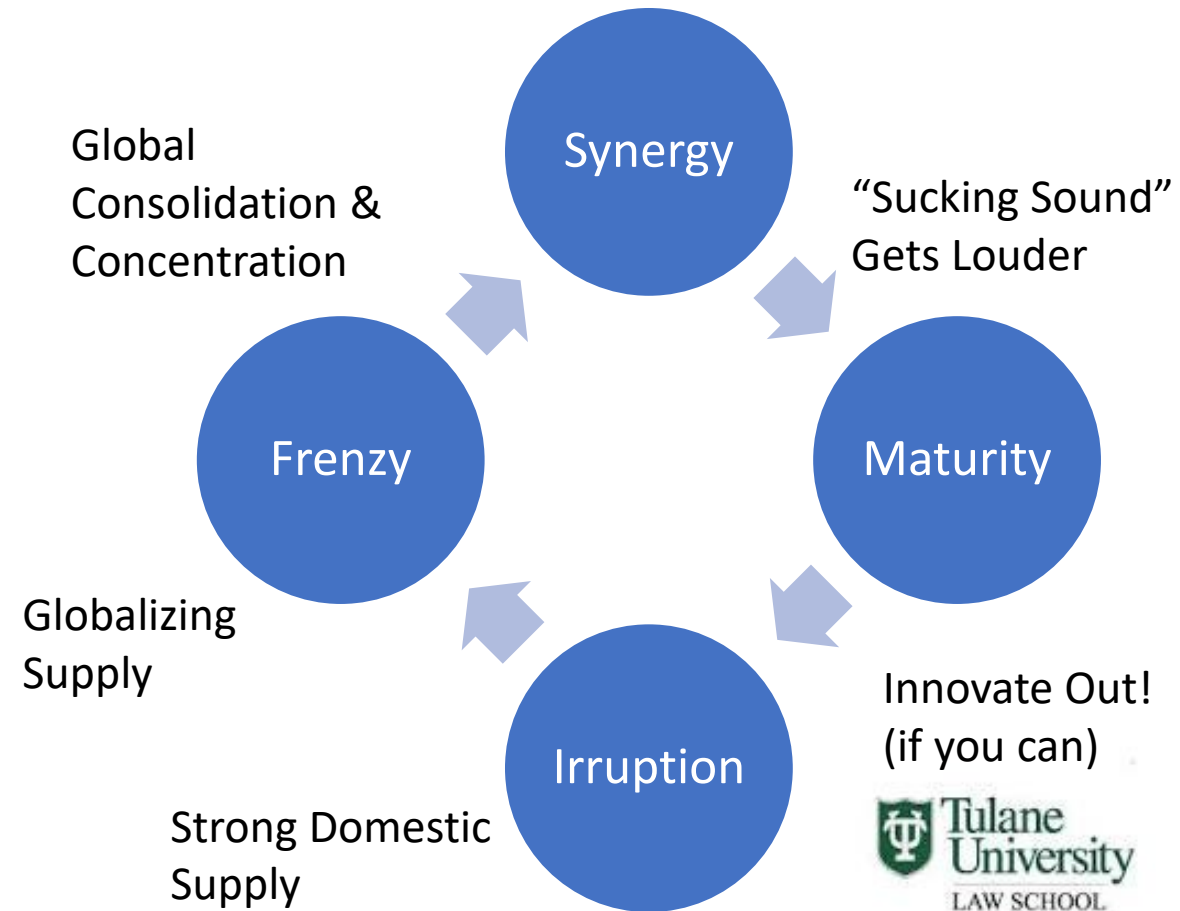
Unintended Global Consequences



Domestic Synergy & Global Concentration



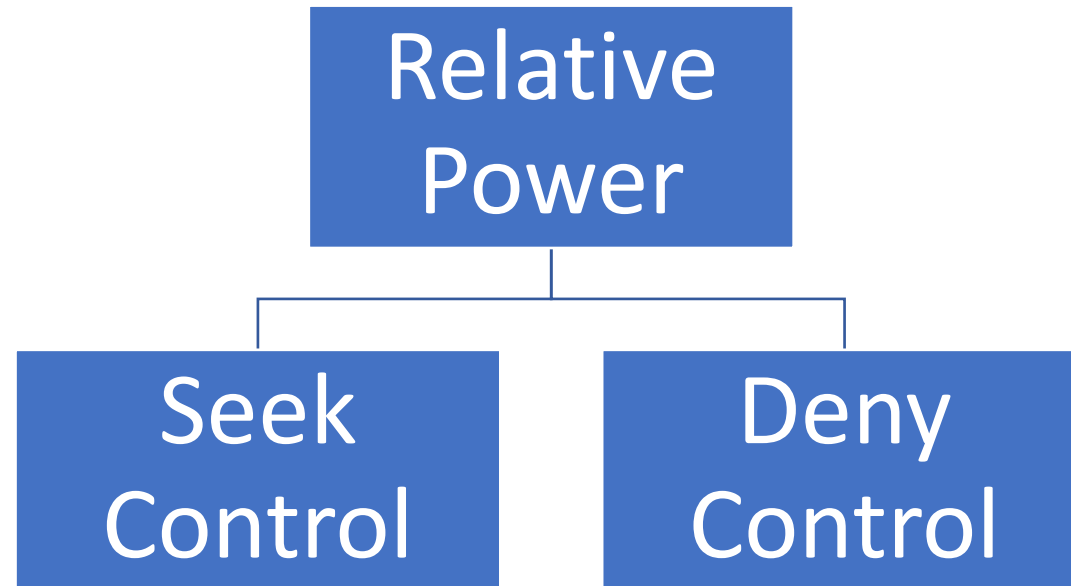
Ross Perot
CNN



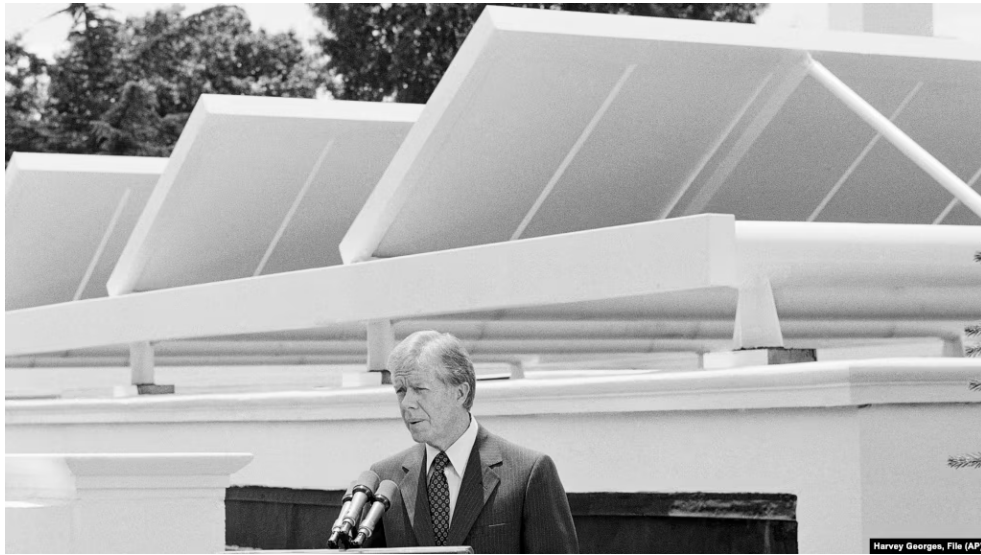
Prudent Realpolitik = Unstable Equilibria



Santi di Tito: Niccolò Machiavelli
Palazzo Vecchio



Imprudent Realpolitik = Moral Equivalent of War



Pres. Jimmy Carter (& Solar Panels)
Harvey Georges (AP)

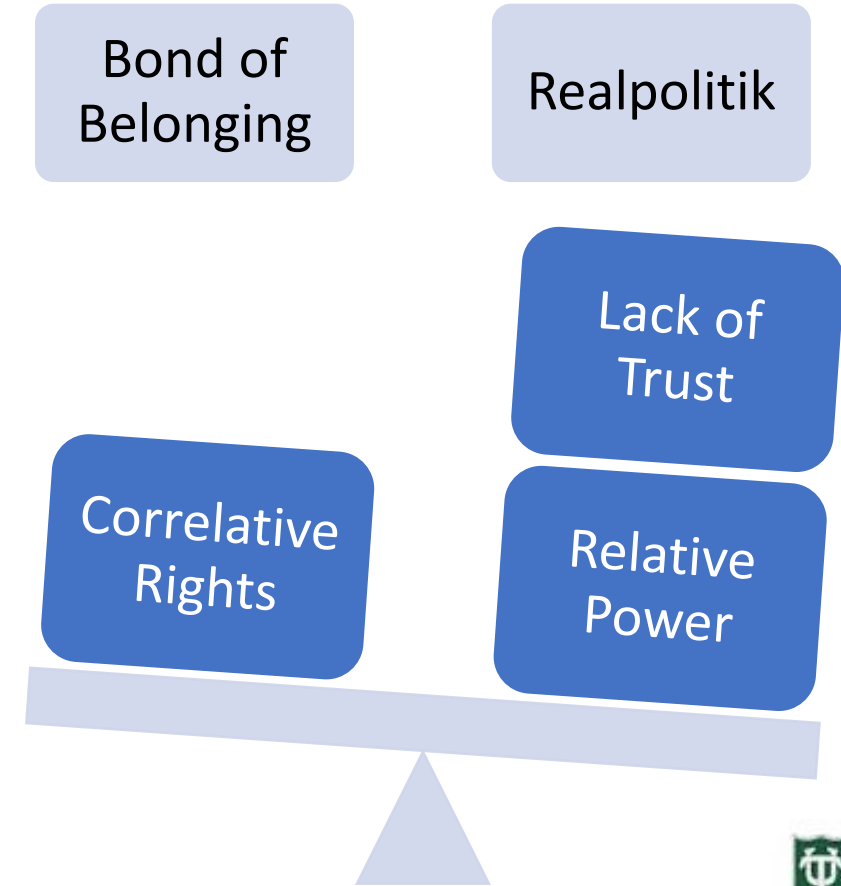


Chancellor Dr. Angela Merkel (& Others at
NordStream Pipeline Event)
S. Sauer (DPA)

How Do We Get to Global Belonging?



Jacques Louis David: Intervention of the Sabine Women
Musée du Louvre

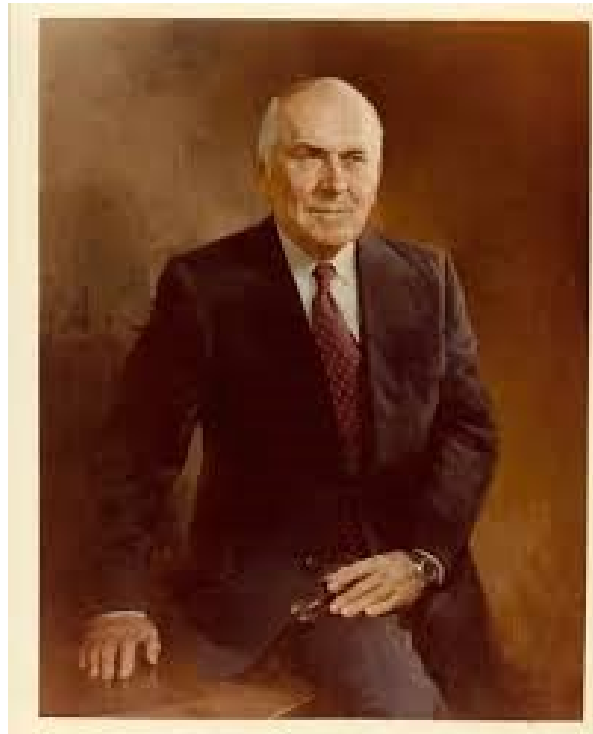


Ends

Energy = Economic Development ?



Eugene Black



John McCloy

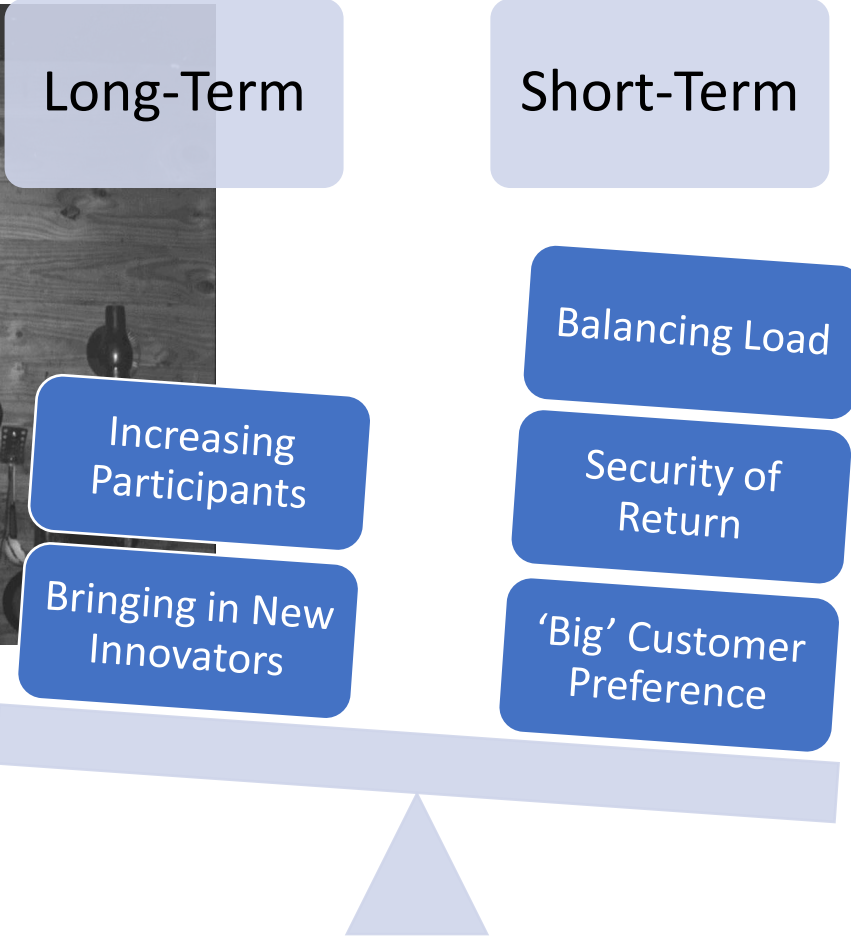


Thomas Phillips: David Ricardo
National Portrait Gallery

The Growth Blindspot

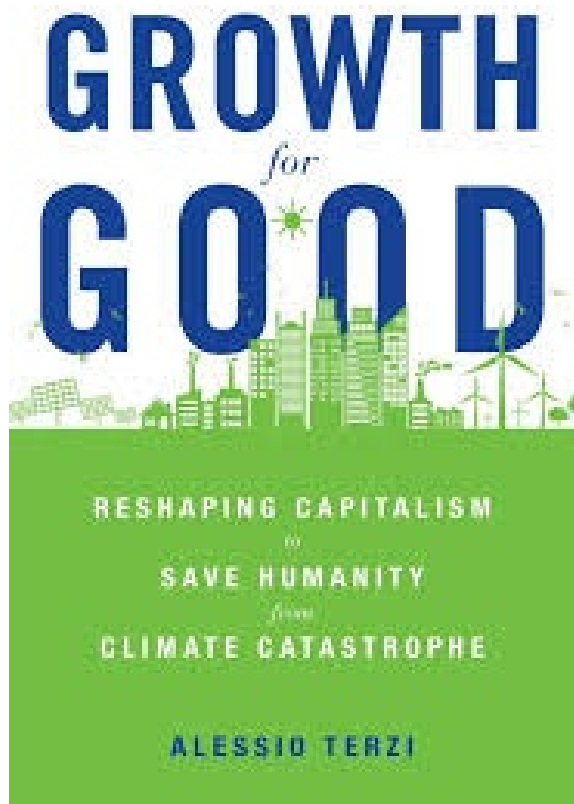


Rep. Lyndon B. Johnson
Credit: LBJ Library



Samuel Insull

Blindspot Continues to Feed Global Rivalry



Harvard University Press



Santi di Tito: Niccolò Machiavelli
Palazzo Vecchio

Human Development = Human Flourishing



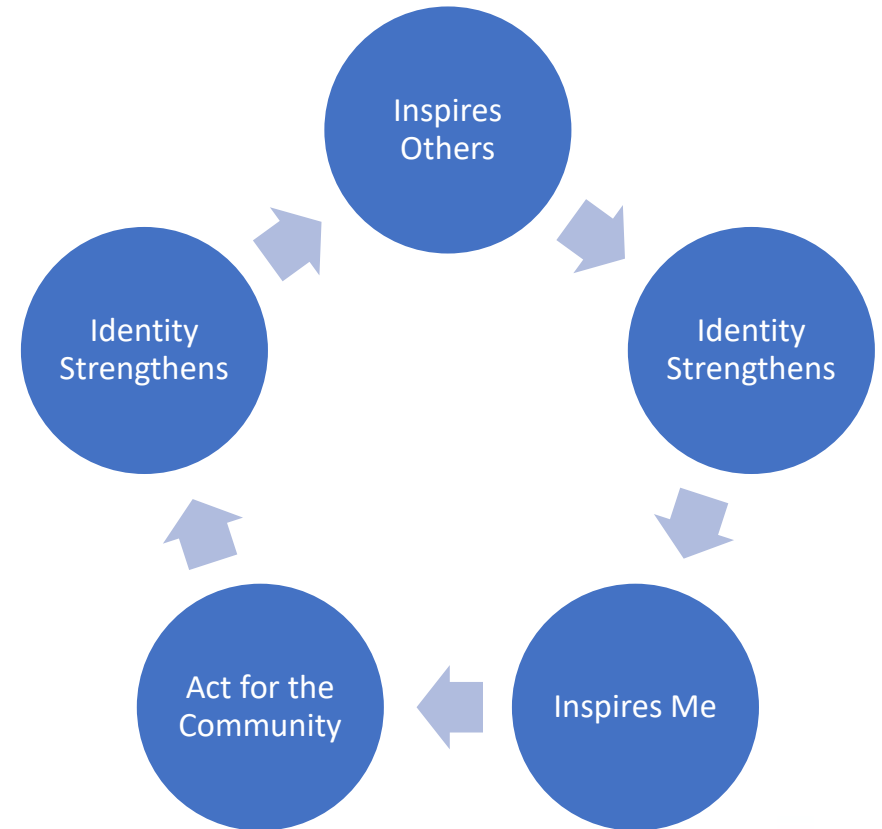
Raphael: School of Athens
Apostolic Palace

A good life, instead, is about human flourishing. Human flourishing is about agency – works –undertaken in the pursuit of realizing discerning judgment. Agency is creative. It makes something. Making something is meaningful (full of meaning). ‘Meaning’ here reflects an understanding of being in the world as acting through the world. This understanding can come only by practicing care for the world. Without such care, we cannot reflect how we come to be in the world, how the world comes to be with us, and how we act in it. Without care, we thus relinquish agency because we lose the ability to contribute meaningfully to the world. In other words, we lose our ability to live a good life.

Human Development Requires Civic Virtue



Jacques Louis David: Oath of the Horatii (Musée du Louvre)



Development & Human Capabilities



Creating Capabilities

THE HUMAN DEVELOPMENT APPROACH

MARTHA C. NUSSBAUM

Harvard University Press

- 1) Life
- 2) Health
- 3) Bodily integrity
- 4) Education (senses, imagination & thought)
- 5) Care for others
- 6) Discerning judgment
- 7) Belonging
- 8) Environmental stewardship
- 9) Play
- 10) Political and material agency.

Human Development's Rights Moment

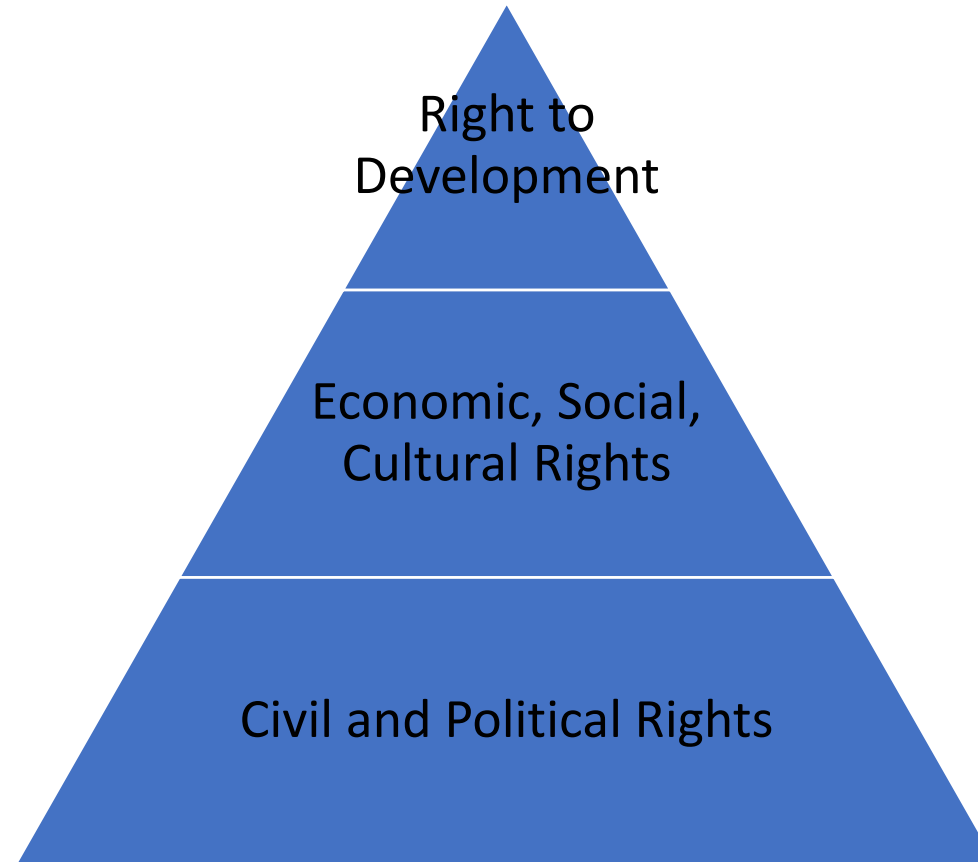
The Human Right to Development as a New Foundation for International Economic Law

Diane A. Desierto*

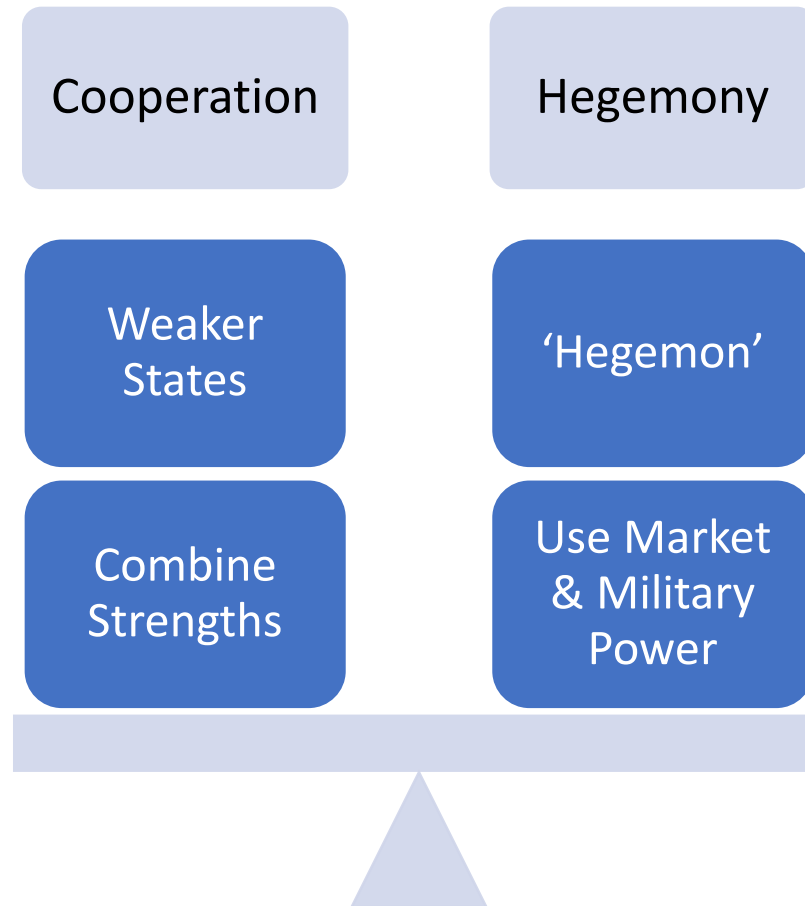
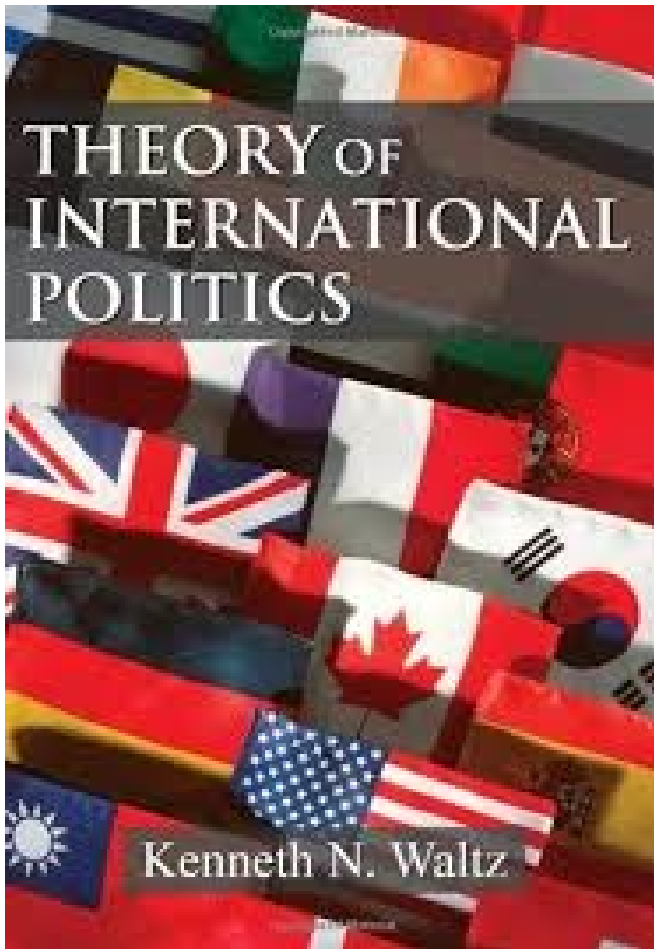
This Article, drawing from the 2022 Gillian White Lecture on International Economic Law at the University of Manchester, argues that the emerging human right to development—as articulated in the 1986 Declaration on the Right to Development and the April 2022 Draft Convention on the Right to Development—introduces a new normative foundation for international economic law, especially in its definition of the right to development as the right of “every human person and peoples . . . by virtue of which they are entitled to participate in, contribute to, and enjoy civil, cultural, economic, political and social development that is indivisible from and interrelated with all other human rights and fundamental freedoms,” and where they “have the right to active, free and meaningful participation in development and in the fair distribution of benefits resulting therefrom.” This Article contends that the human right to development stands to shift our framing of international economic law, precisely because the human right to development directly involves both the development decision-making process and the actual lived development outcomes for human persons and all peoples. The April 2022 Draft Convention elaborates specific international obligations, including duties to cooperate, specific and remedial measures for marginalized and vulnerable persons and peoples, indigenous peoples’ rights, sustainable development, among others, that focus on implementing the right to development within the global, regional, and national economic systems of decision-making. Finally, the human right to development could ultimately constitute a relevant rule under Article 31(3)(c) of the Vienna Convention on the Law of Treaties for informing the interpretation of “development” as widely used throughout international economic treaties.

I. INTRODUCTION: DEVELOPMENT AND THE IMAGINARIES WITHIN INTERNATIONAL ECONOMIC LAW	58
II. DEVELOPMENT AS A VARIABLE NORM WITHIN INTERNATIONAL ECONOMIC LAW	61
III. THE HUMAN RIGHT TO DEVELOPMENT AS A NEW FOUNDATION FOR INTERNATIONAL ECONOMIC LAW	67
IV. CONCLUSION	73

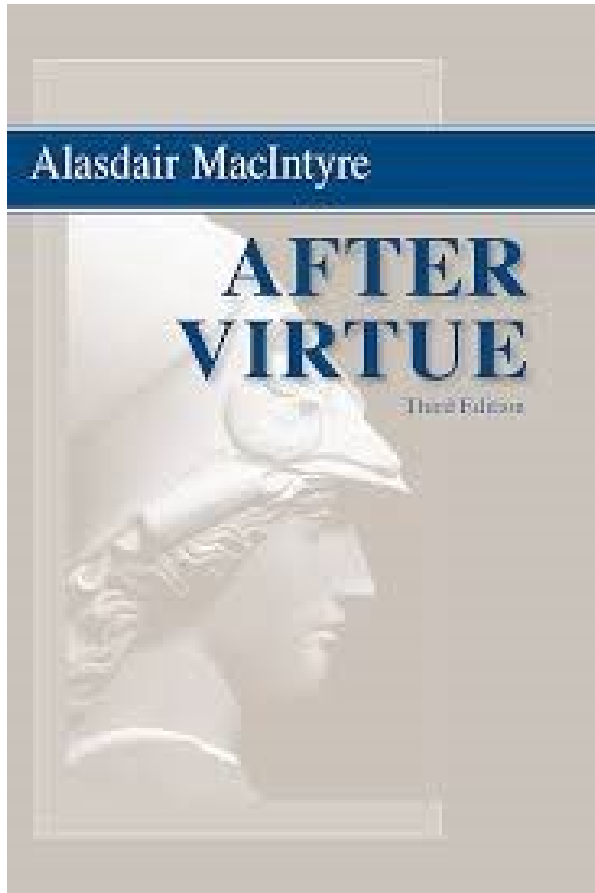
* © 2023 Diane A. Desierto, Professor of Law and Global Affairs and Faculty Director, LLM in International Human Rights Law, Notre Dame Law School, with joint appointment as tenured full Professor at the Keough School of Global Affairs, University of Notre Dame; Professor, Philippines Judicial Academy of the Supreme Court of the Philippines; Faculty Fellow (Klaus Institute on Civil and Human Rights, Kellogg Institute of International Studies, Liu Institute of Asia and Asian Studies, Pulte Institute of Global Development, Nanovic Institute of European Studies), University of Notre Dame; Former Chair-Rapporteur and Current Member, United Nations Expert Drafting Group on the Right to Development.



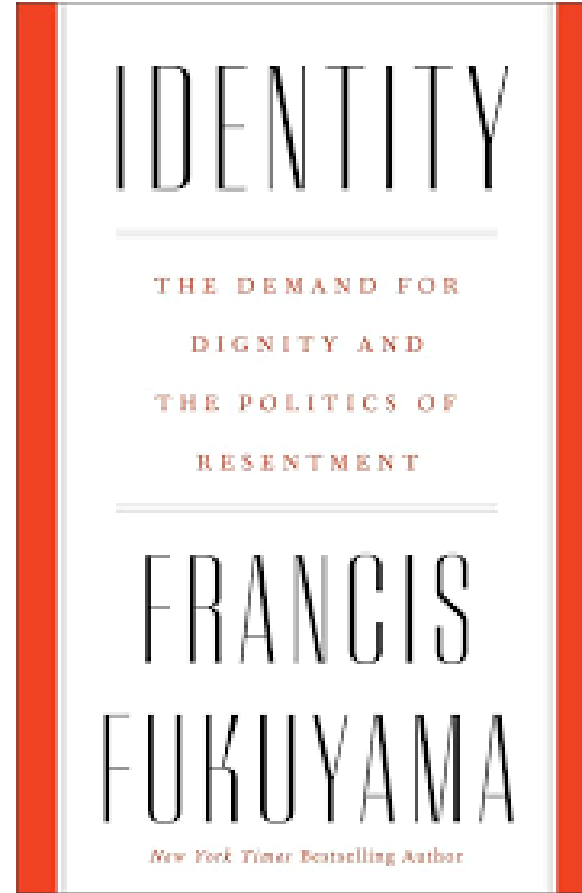
Cooperation as a Means



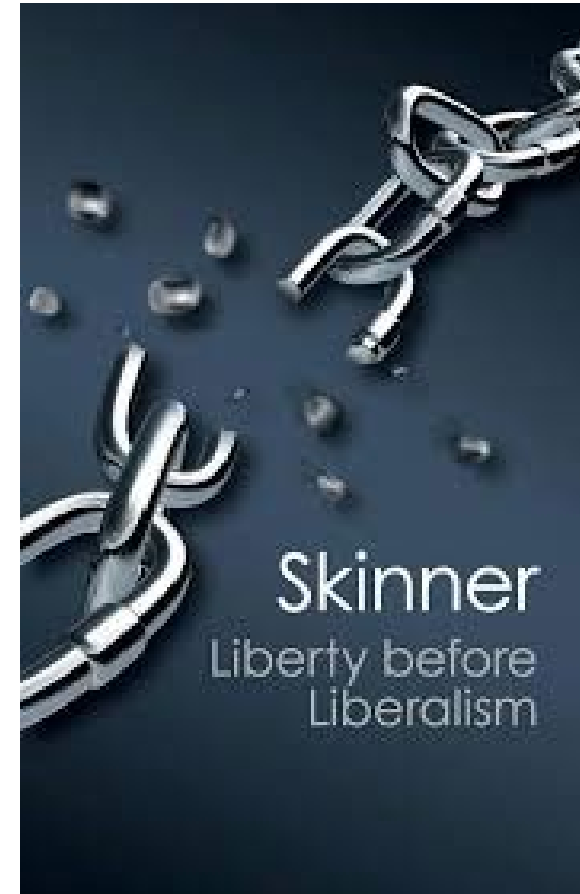
Cooperation as Belonging



University of Notre Dame Press



Farrar Straus Giroux

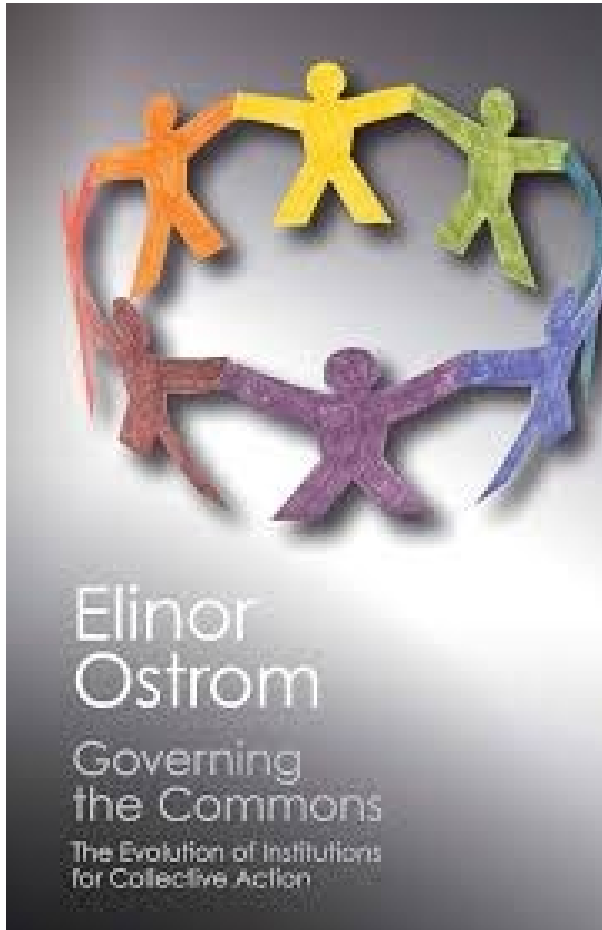


Cambridge University Press

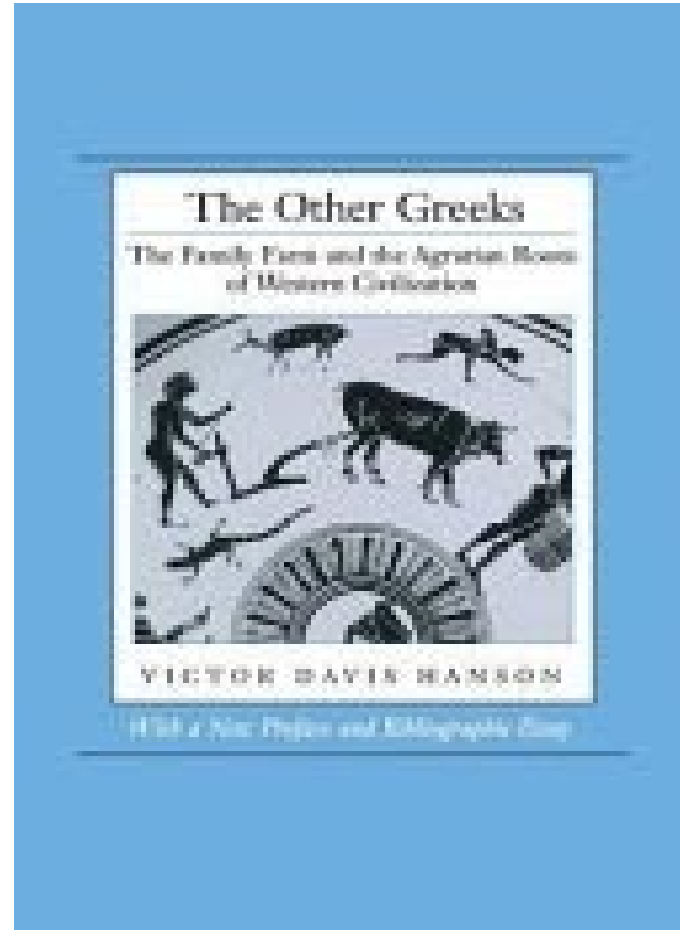
Cooperation = practice
of practices

“I will stop cooperating
with you if not
cooperating with you
makes me belong with
you more”

Commons Governance



University of Notre Dame Press



University of California Press

Belonging = trust.

Cooperation = common investments.

Sense of agency in deliberation and implementation of joint decisions.

Mutual supervision to avoid free riders and that all who belong in fact cooperate.

Hoplite warfare did not have 'officers' to keep order. Instead, the greatest incentive to do well in battle and keep one's nerve was that each hoplite was flanked by his neighbours – and knew he was.

“Mutual Benefit” Imperative



**International Covenant on
Civil and Political Rights**

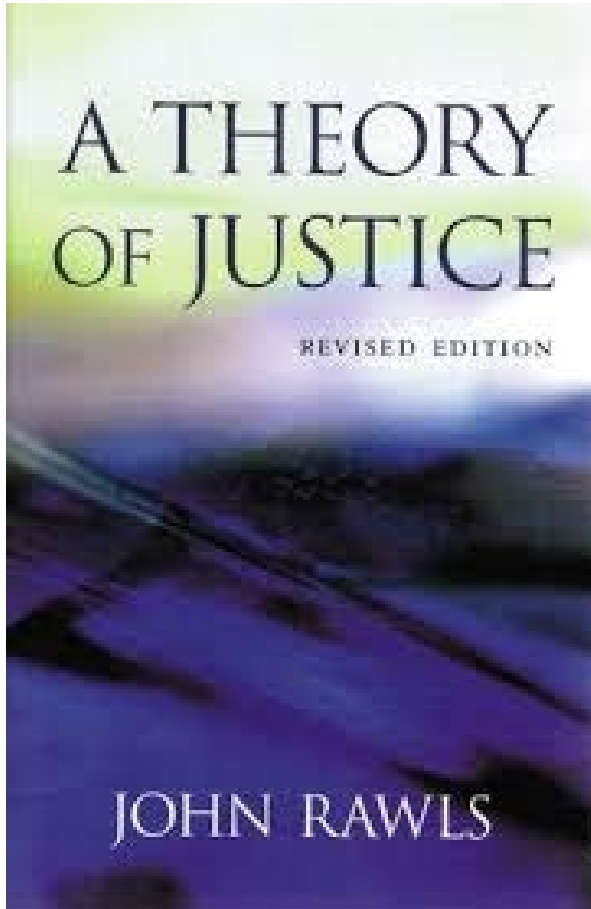
Article 1(2)

“All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, **based upon the principle of mutual benefit**, and international law”



**International Covenant on
Economic Social and Cultural Rights**

Public Goods

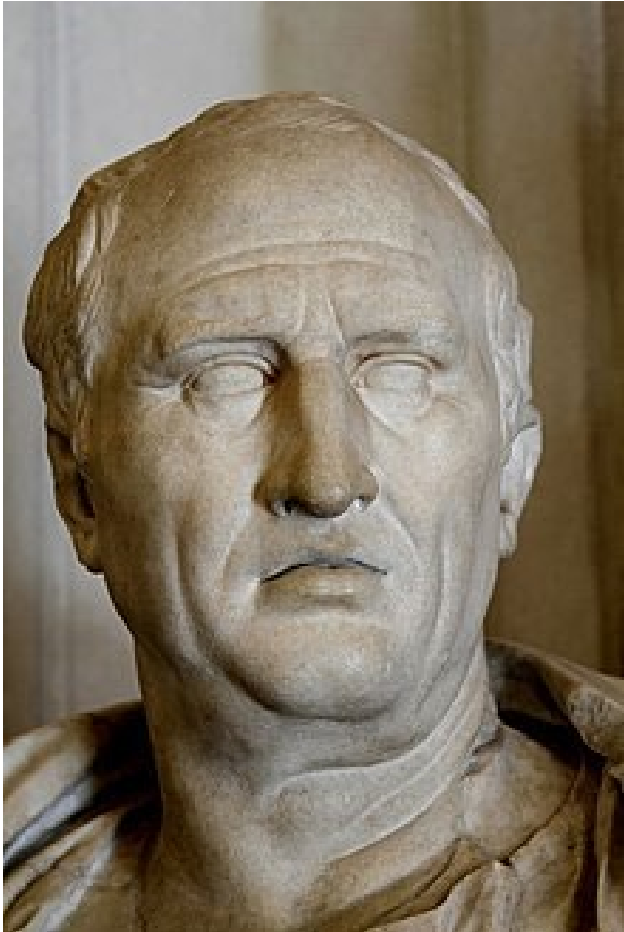


Harvard University Press

- Requires resource pooling
- Non-rivalrous
- Non-excludable

- Energy System = Public Good

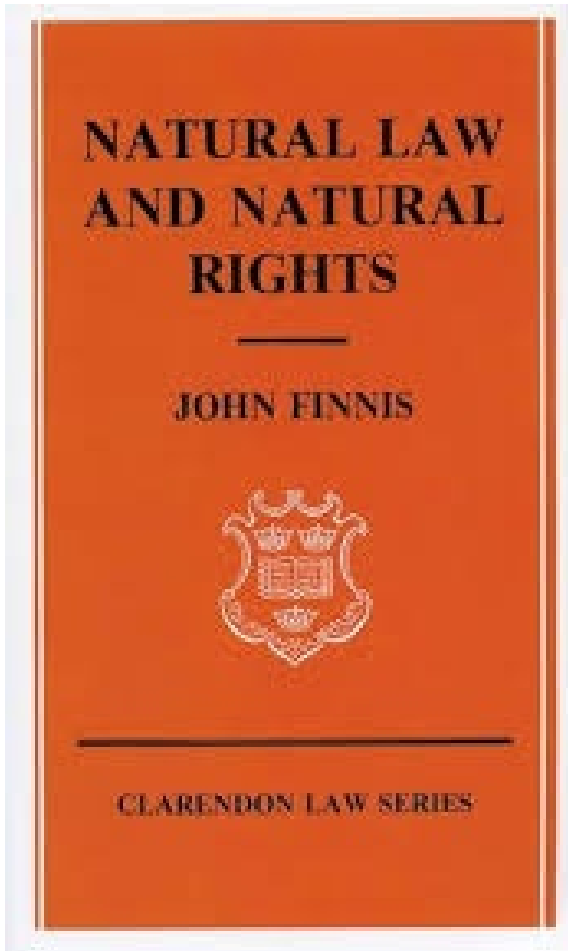
Common Good



Cicero – Capitoline Museum

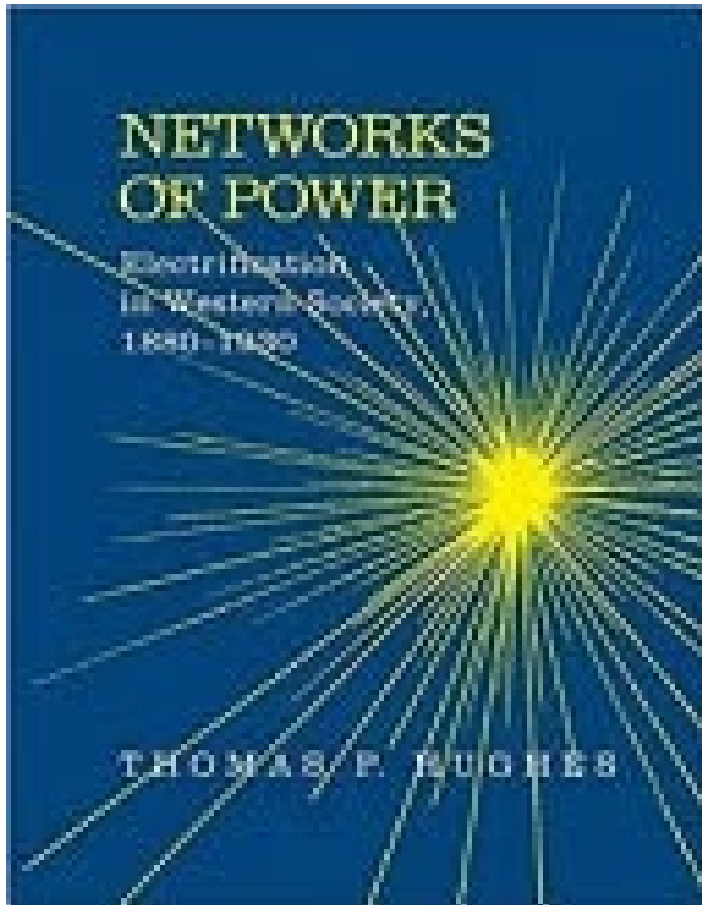
Good that can be achieved, if at all, through communal efforts for the welfare of each member.

Mechanics of the Common Good

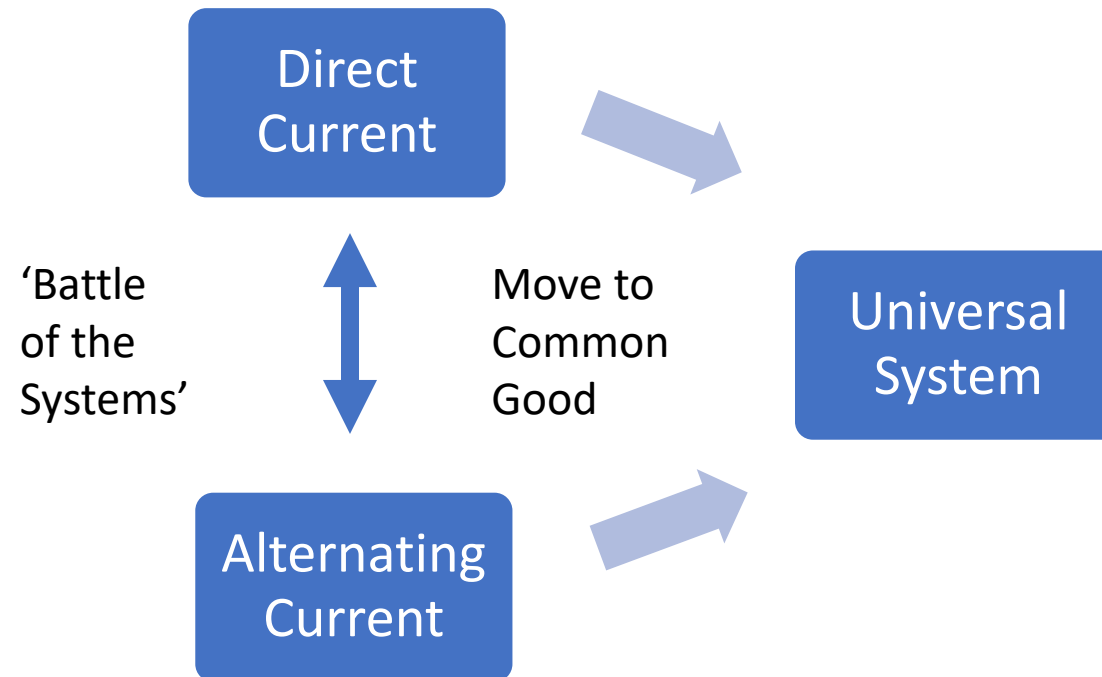


- (i) each acts for well-being of community, for sake of community;
- (ii) community provides for welfare of each for the sake of each;
- (iii) each knows of activities of others for common, reciprocal end;
- (iv) each coordinates to secure a reciprocal good in community.

1. Common Energy Good: Energy Peace



Johns Hopkins University Press



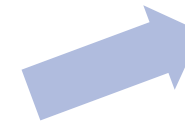
2. Common Energy Good: Energy Abundance



Energy Peace



Human Development

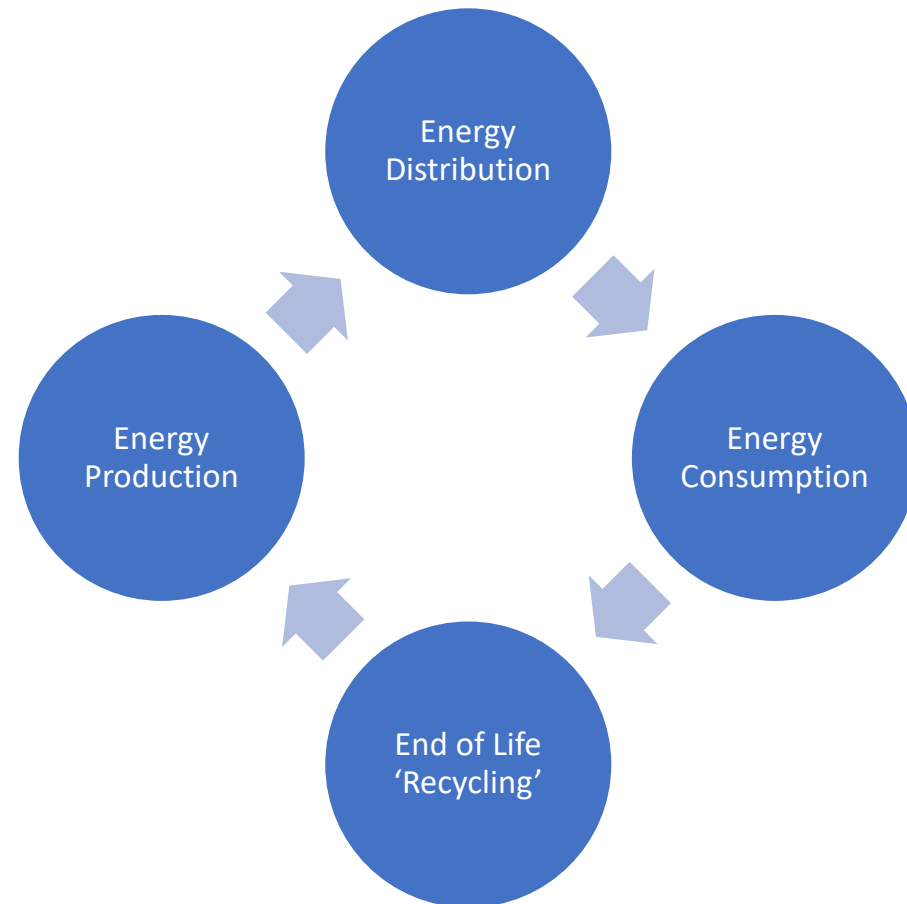


More Investment
in Marginal
Projects

3. Common Energy Good: Energy Stewardship



HM King Charles III (then HRH The Prince of Wales)
Getty Images



A Truly Global Bond of Energy Belonging



Pres. François Mitterrand & Chancellor Dr. Helmut Kohl at Verdun Memorial '84
Bundesregierung.de

Institutions

Finance



Loan Signing for Panama
Fourth Power Project (1977)
David Cieslikowski/ World
Bank

Innovation & Market-Based Lending



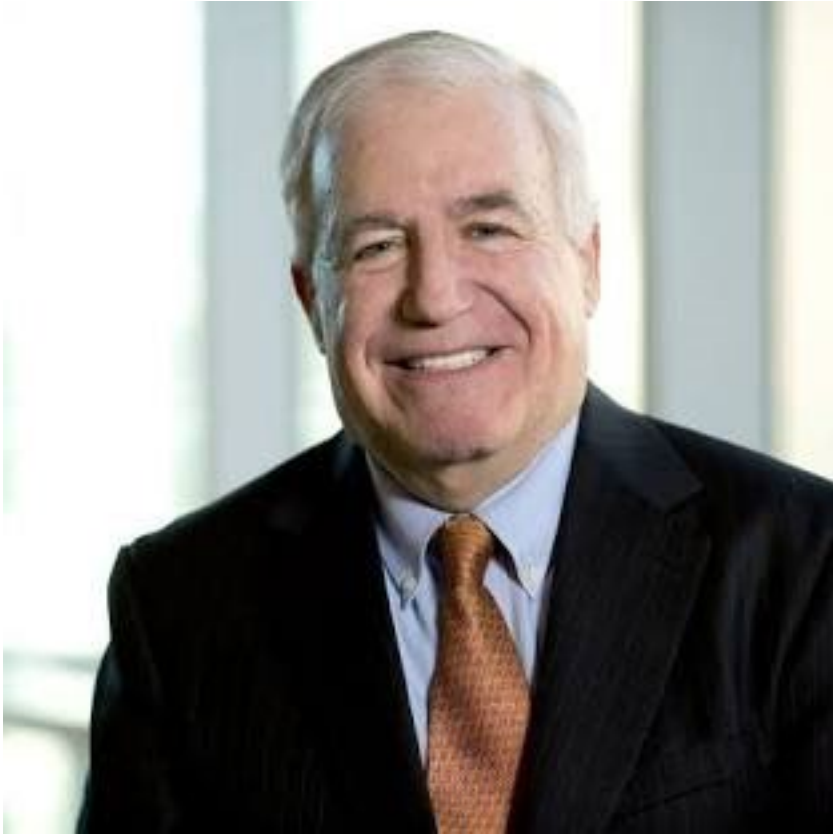
Jamie Dimon, JP Morgan Chase
Photo: Mark Wilson/Getty Images

I can sell innovation to sufficient, known individual customers.

Innovation has offtake security.

Innovation is 'bankable.'

The 'Missing Money' Problem

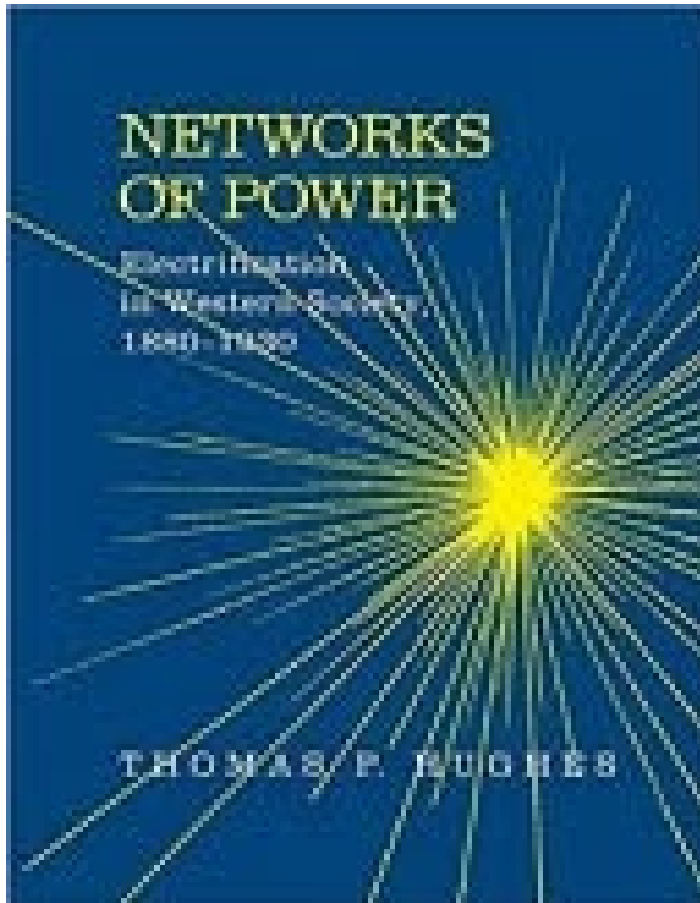


Paul L. Joskow
MIT Energy Initiative

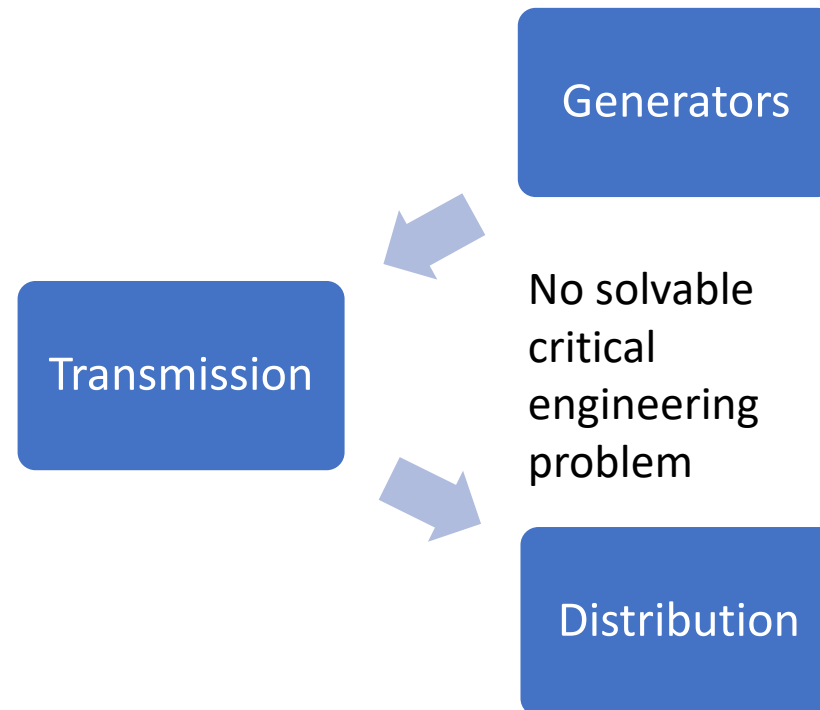


2003 New York Blackout
ABC7 New York

Reverse Salient Failures



Johns Hopkins University Press



What if
innovation is
too slow?

No lightbulb
moment.

Critical Policy Problems & 'Missing Money'



'Carbon Disarmament' As Missing Money Problem



Pres. Ronald Reagan and General Secretary Mikhail Gorbachev
Photo Credit: Reagan Library

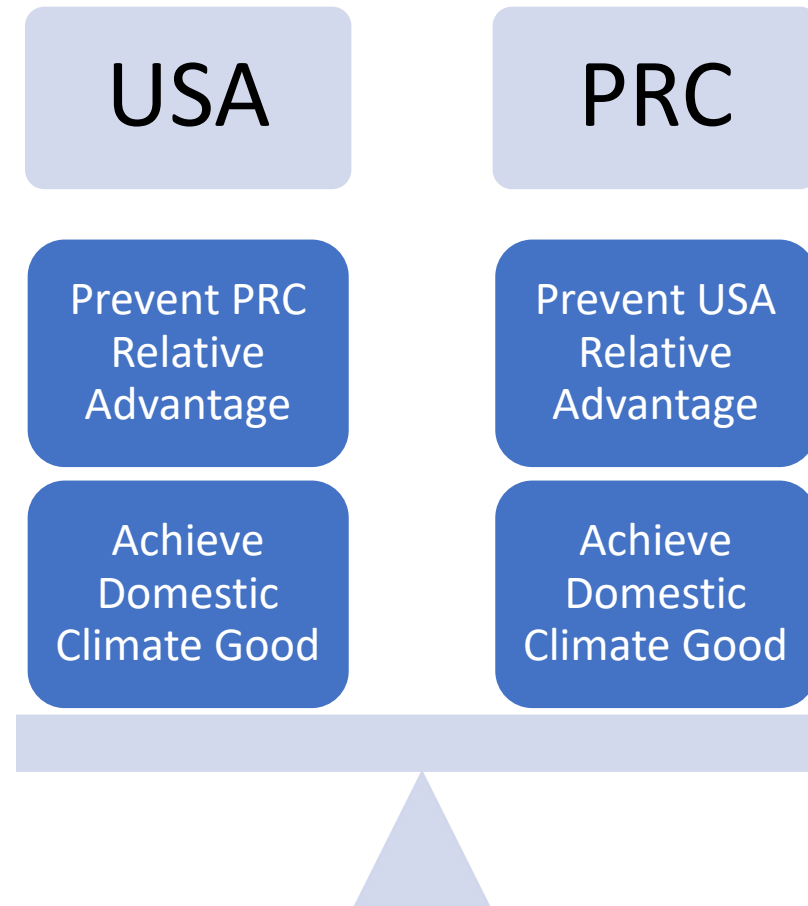
Decarbonization requires missing money coordination

- Core Benefit of Paris?
- Trust, But Verify (emission reduction efforts)

Is It Realpolitik Tenable?



Santi di Tito: Niccolò Machiavelli
Palazzo Vecchio



Can It Grow Beyond Realpolitik?



Sultan Al Jaber, President of COP28, Dubai
Kamran Jembreili, AP

28. *Further recognizes* the need for deep, rapid and sustained reductions in greenhouse gas emissions in line with **1.5 °C pathways** and *calls on* Parties to contribute to the following **global efforts**, in **a nationally determined manner**, [...]:

(a) Tripling renewable energy capacity globally and doubling the global average annual rate of energy efficiency improvements by 2030; [...]

(c) Accelerating efforts globally towards net zero emission energy systems, utilizing zero- and low-carbon fuels well before or by around mid-century;

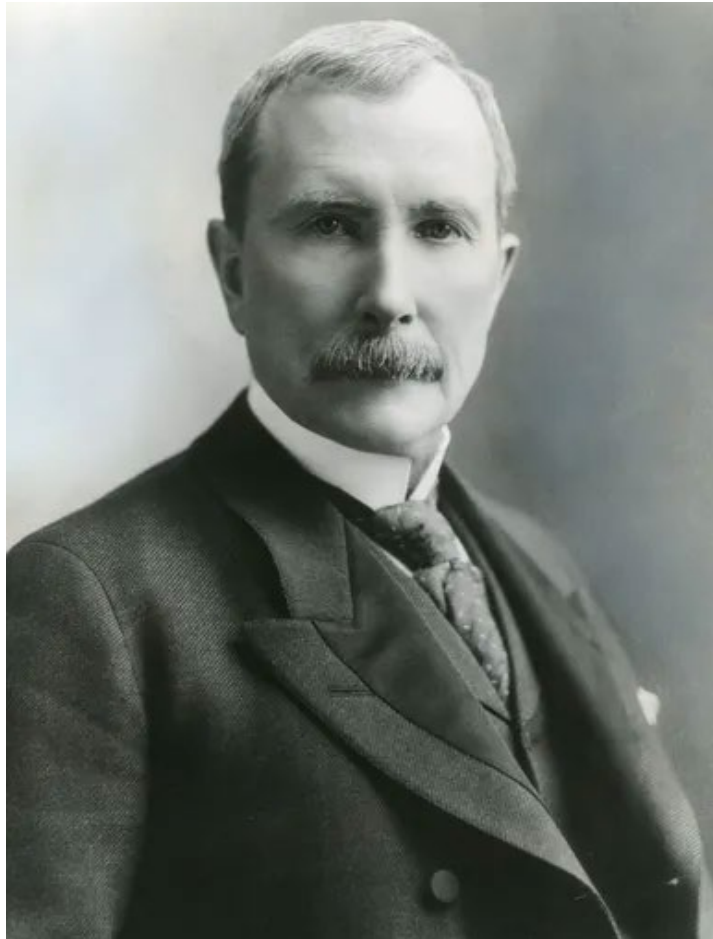
(d) **Transitioning away from fossil fuels** in energy systems, in a **just, orderly and equitable manner**, accelerating action in this critical decade, so as to achieve **net zero by 2050** in keeping with the science;

Value Chains

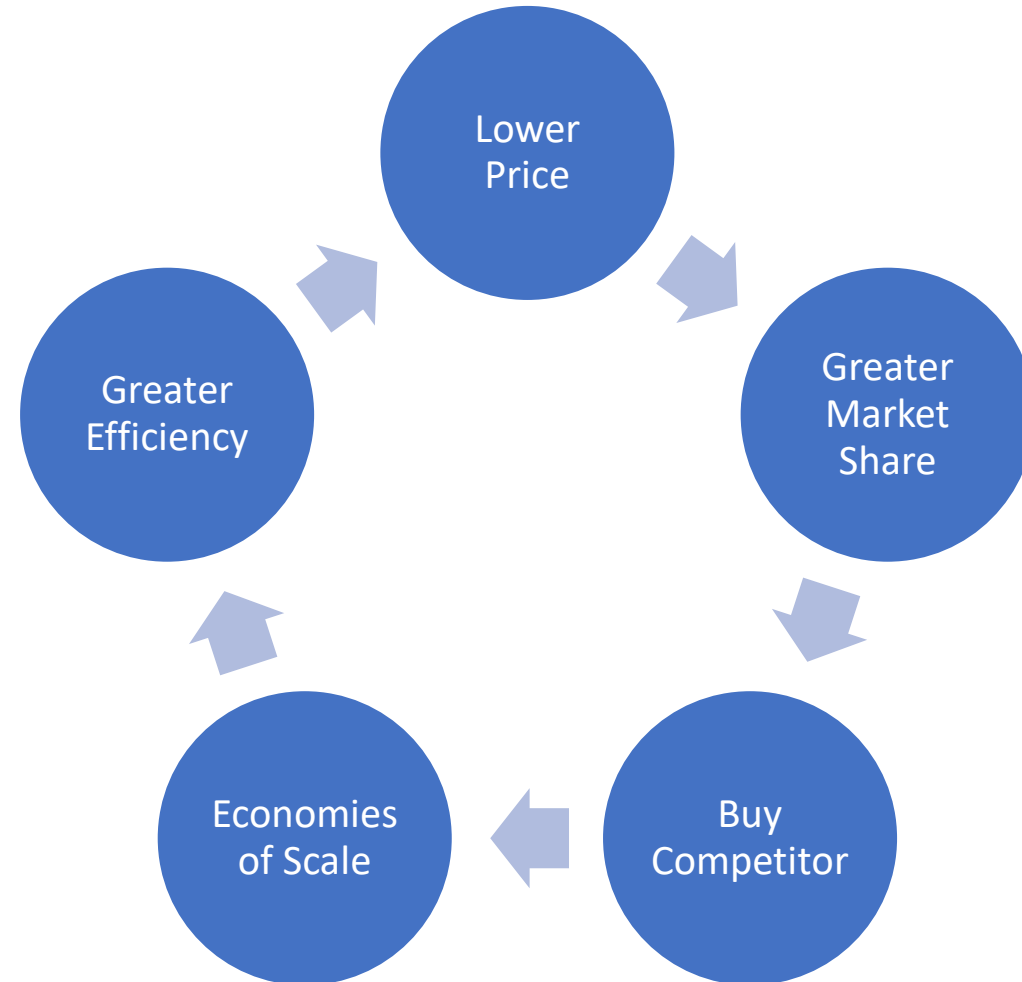


LNG Terminal,
Wilhelmshaven, Germany
David Hecker/ Getty Images

The Gravitational Pull of Concentration



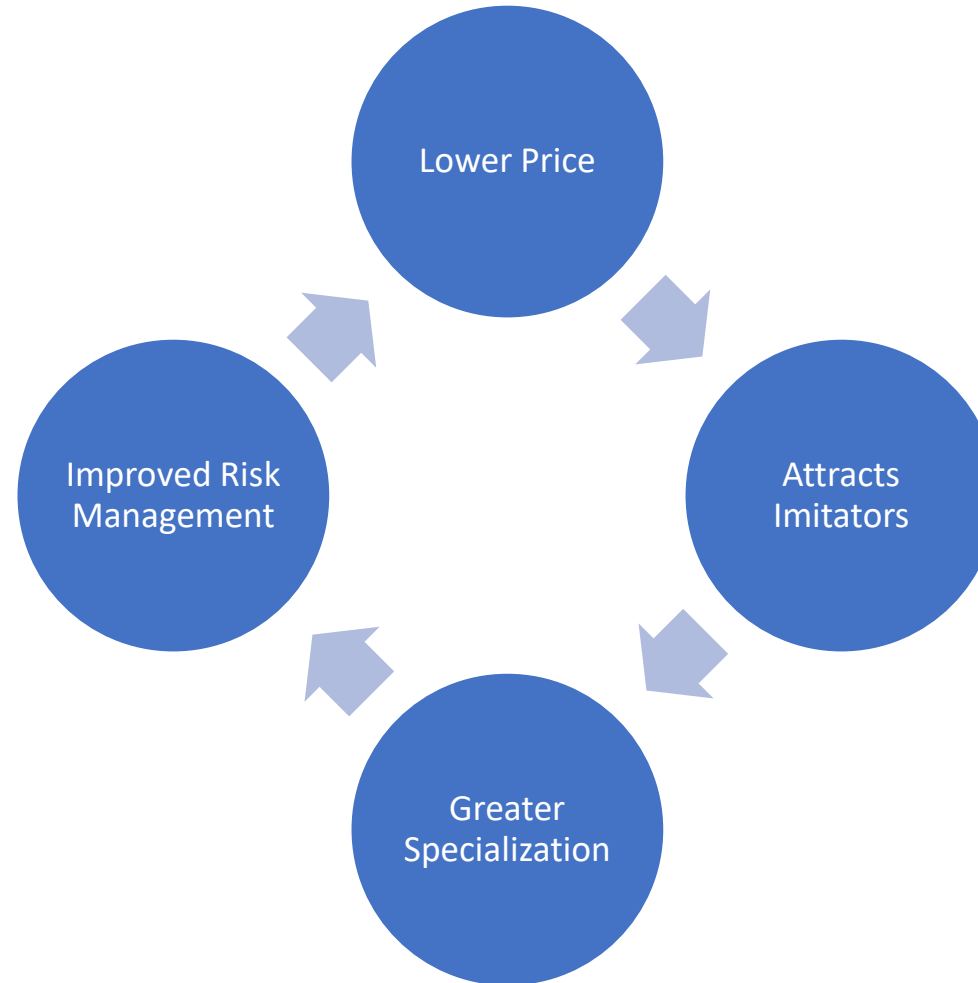
John D. Rockefeller



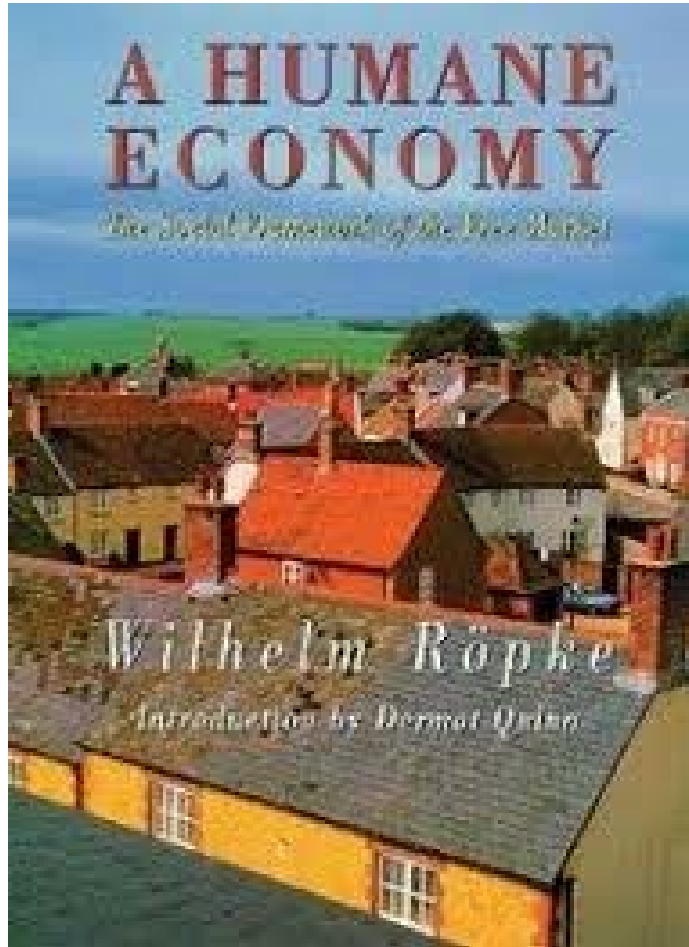
Innovation Based De-Concentration



George P. Mitchell at Wise County Gas Plant (1991)
Texas A&M University Press



De-concentration as Energy Agency



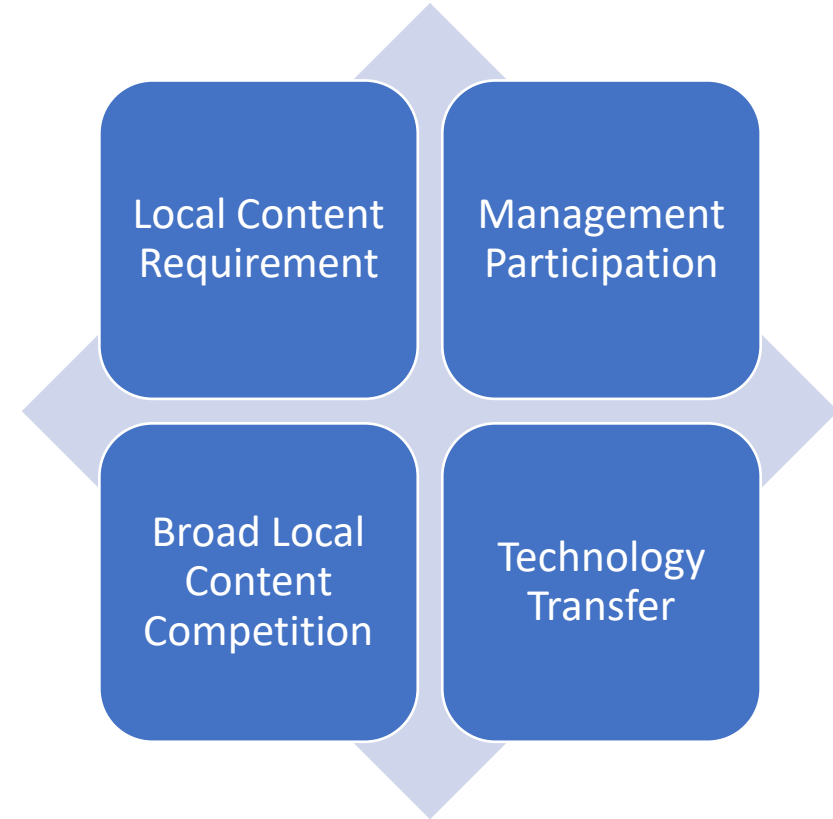
“Most important in this context is the fact that the web of human relations is growing closer as a result of the steady increase in the number of dependent wage earners. **The individual is getting caught in a situation of subordination and dependence in relation to centers of decision.** This process is part of the great upheaval the American economist K.E. Boulding calls the organizational revolution, and it disturbs the balance of human relations. The relation between independent market parties, the buyers and sellers, is horizontal and loose, if not impersonal. As firms grow in size and the number of independent market parties diminishes, the market’s more or less impersonal and loose co-ordination is replaced by the vertical, close, and personal relation of subordination and authority. Dependence upon the client or the supplier through a market wide enough to do away with rigid personal relationships is replaced by dependence upon the boss.”

(p. 236)

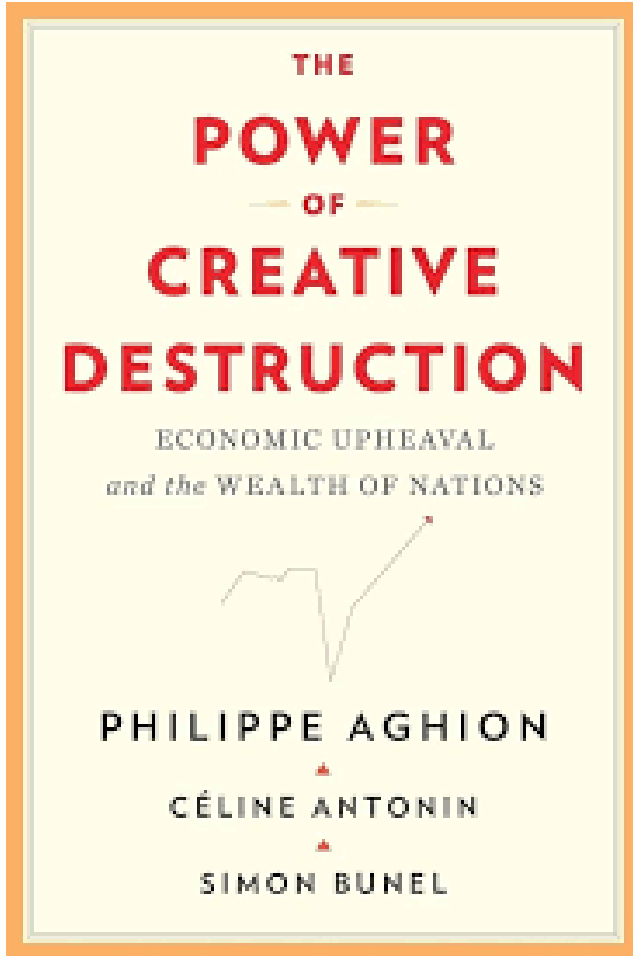
Local Content Forcing



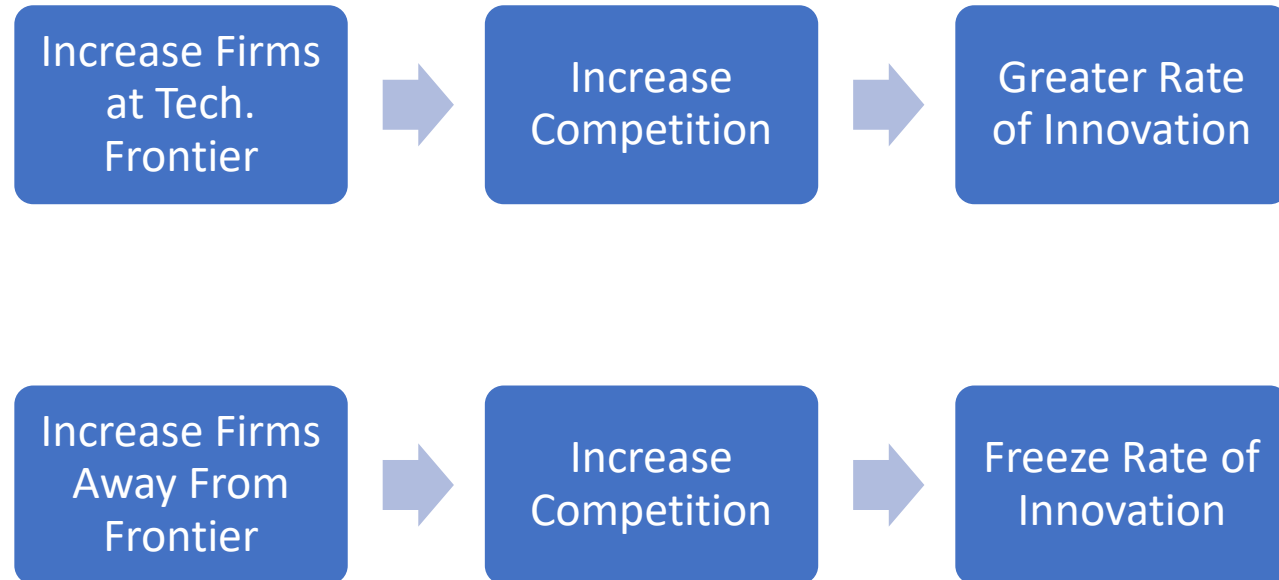
Abu Dhabi 1970 vs. 2018
Alex Westcott/Gulf News & Archives



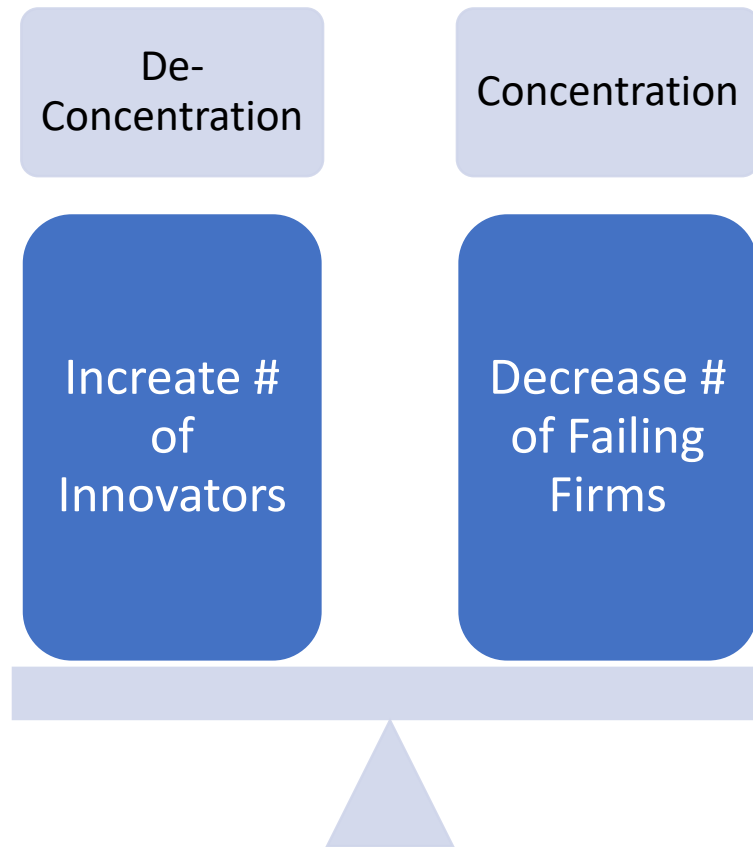
Technological Frontier To De-Concentration



Harvard University Press



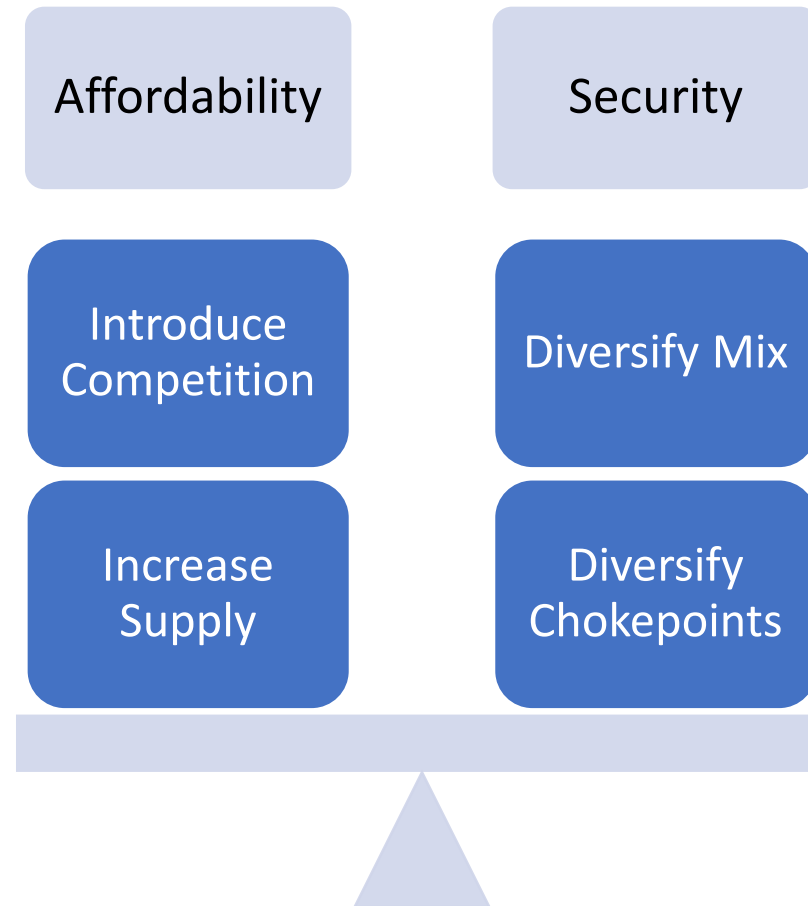
Balancing Energy Value Chain Concentration



Is It Realpolitik Tenable?



Santi di Tito: Niccolò Machiavelli
Palazzo Vecchio



Can It Grow Beyond Realpolitik?



New York Times (28 March 1976)

New North-South Dialogue?



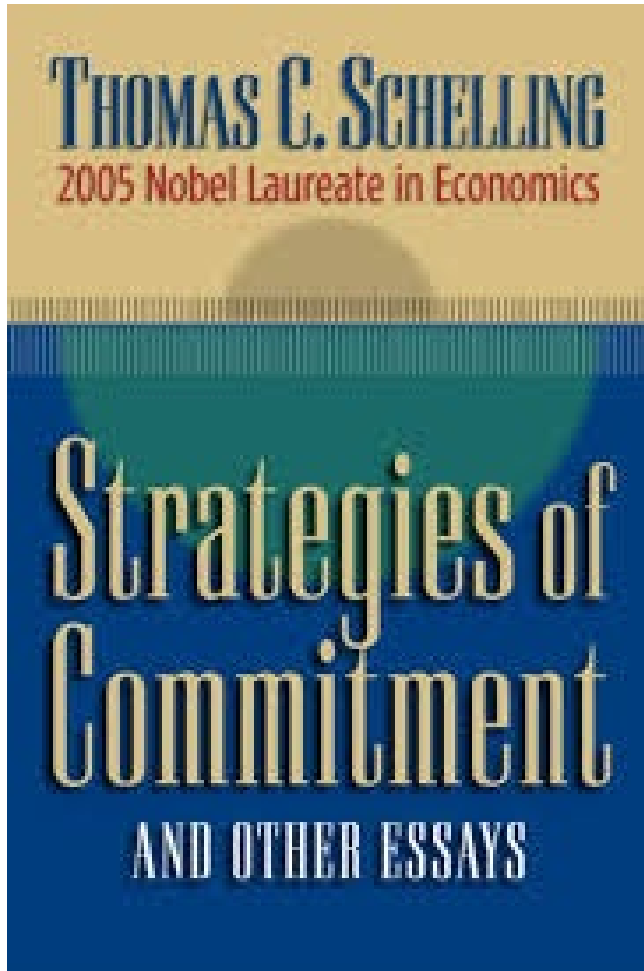
Pres. Donald Trump & Crown Prince Mohammed Bin Salman '19
Bandar Algaloud/Courtesy of Saudi Royal Court.

Rule of Law



Cabinet Member as Special Counsellor to the President Ambassador David M. Abshire and Deputy Special Counsellor Judge Charles N. Brower with President Reagan in the Oval Office. Photograph signed "To Charlie Brower—With my thanks, every good wish & Very Best Regards. Ronald Reagan." (Official White House photo, February 11, 1987)

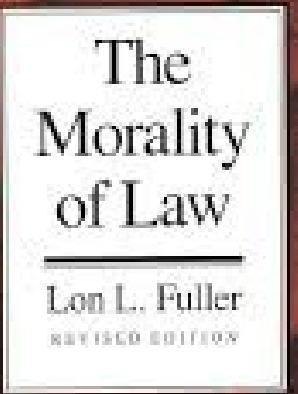
The Need for Precommitment



Harvard University Press

“I use commitment to mean becoming committed, bound, or obligated to some course of action or inaction or to some constraint on future action. It relinquishes options, eliminating choices, **surrendering some control over one’s future behavior**. And it is doing so deliberately, **with a purpose**. Commitment does so by **affecting that other’s expectations** of the committed one’s behavior.”

Effective Precommitment as Thin Rule of Law



Yale University Press

LET ONE HUNDRED FLOWERS BLOOM, ONE HUNDRED SCHOOLS CONTENT: DEBATING RULE OF LAW IN CHINA[†]

Randall Peerenboom*

I. THIN VERSIONS OF RULE OF LAW	477
A. <i>Advantages of Thin Theories</i>	480
B. <i>Normative Concerns About Thin Theories and the Relation Between Thin and Thick Theories</i>	482
II. FOUR IDEAL TYPES: STATIST SOCIALIST, NEO-AUTHORITARIAN, COMMUNITARIAN, LIBERAL DEMOCRATIC	486
A. <i>The Economic Regime</i>	490
B. <i>The Political Order</i>	492
C. <i>Perspective on Rights</i>	494
D. <i>Purposes of Rule of Law</i>	497
E. <i>Institutions and Practices</i>	500
F. <i>Rules</i>	504
G. <i>Outcomes in Specific Cases</i>	505
III. A RESPONSE TO SEVERAL COMMON CRITIQUES	510
A. <i>Specifying the Minimal Conditions for Rule of Law: Will We Know Rule of Law in China When We See It?</i>	510
B. <i>Imposition of a Western Ideal? The Lack of Viable Alternatives to Rule of Law</i>	526
C. <i>Why We Can't Simply Abandon Rule of Law Talk or Reserve Rule of Law for Liberal Democracies</i>	530
D. <i>From Theory to Practice: Are Non-Liberal Democratic Rule of Law Systems Sustainable?</i>	533
CONCLUSION.....	536

[†] © 2002 Randall Peerenboom.
^{*} Randall Peerenboom (peerenbo@law.ucla.edu) obtained a B.A. in Philosophy, M.A. in Chinese Religion, and Ph.D. in Philosophy before obtaining a J.D. from Columbia Law School. He has written extensively on Chinese law and philosophy. From 1994 to 1998, he practiced law with a major international law firm in Beijing. He currently teaches Chinese law at the University of California, Los Angeles. In addition to advising on various aspects of foreign investment in China, he often serves as an expert witness on People's Republic of China (PRC) legal issues and is Of Counsel at Yiwon Law Firm.
A draft of this Article was presented at Columbia University Law School, the Sinology Department of the Katholieke Universiteit in Lueven, and at a conference on "Rule of Law and Group Identities Embedded in Asian Traditions and Cultures," held at UCLA School of Law, and at the Law and Society Conference in Budapest. I would like to thank William Alford, Joseph Chan, Stanley Lubman, Herbert Morris, Stephen Munzer, Arthur Rosett, Richard Steinberg, Margaret Woo, Xia Yong, and the participants at the talks at Columbia, Lueven, UCLA, and Budapest for their helpful comments.

transparent,
clear,
generally applicable,
prospective,
consistent,
relatively stable,
fairly and consistently
applied to like-situated actors,
& reasonably acceptable to a
majority of stakeholders it
governs.

Thin Rule of Law as Realpolitik Tool



Two views of a cippus from the Palatine commemorating the fetial rites

Only as good as its enforcement mechanisms . . .

Yet, Even Thin Rule of Law Creates Community



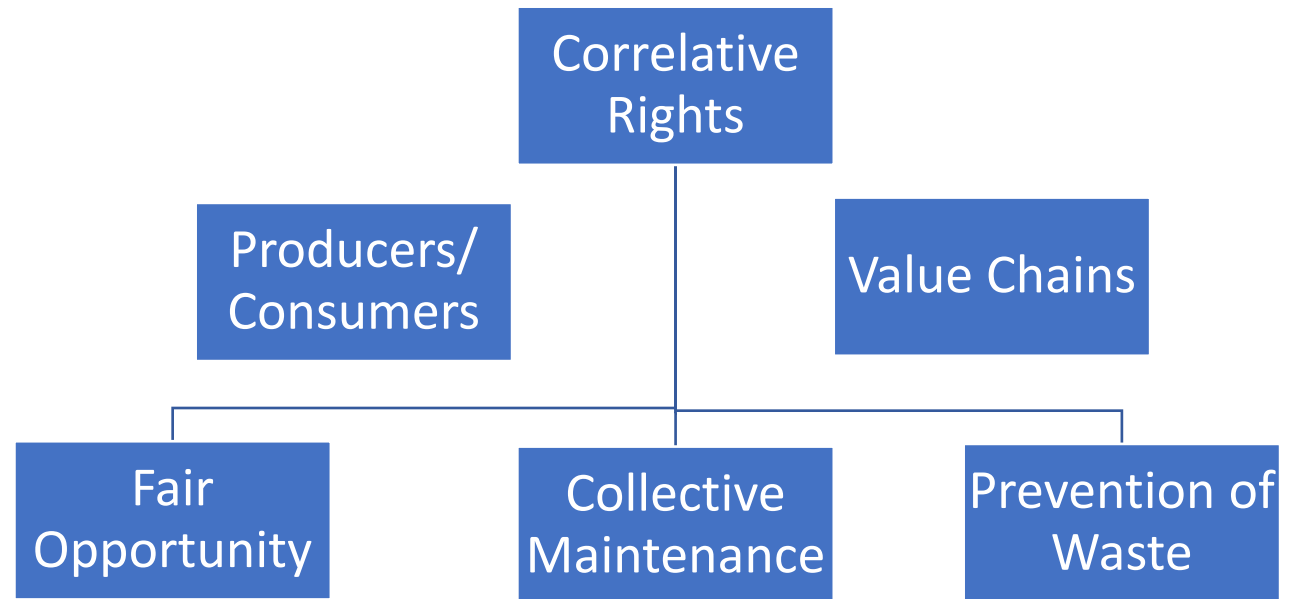
Difference btw. Thick and Thin Rule of Law:
Law serves Common Ethos or Good

Legolas & Gimli, J.R.R. Tolkien, The Two Towers
New Line Cinema

Growing to a Thick Rule of Energy Law



Jacques Louis David: Intervention of the Sabine Women
Musée du Louvre



Roll Wave!

